

Update sheet issued as at 1 January 1991.

**ACT NOT REPRINTED UNDER THE REPRINTS ACT 1972 AS AT
THE DATE OF ISSUE OF THIS SHEET**

INDUSTRIAL AND COMMERCIAL TRAINING ACT 1989 NO. 77

Amendment(s) not included in the current print -

<u>Made by</u>	<u>Provision(s) affected</u>
Miscellaneous Acts (Higher Education) Repeal and Amendment Act 1989 No. 130	s. 4
Industrial Arbitration (Enterprise Agreements) Amendment Act 1990 No. 113	s. 5
Technical and Further Education Commission Act 1990 No. 118	ss. 7; 16

Note. Amendments are shown irrespective of whether they are in force at the date of issue of this sheet.

INDUSTRIAL AND COMMERCIAL TRAINING BILL 1989

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Object of Act
4. Definitions
5. Relationship with Industrial Arbitration Act 1940
6. Act binds Crown

PART 2—ADMINISTRATION

Division 1—The Industrial and Commercial Training Council

7. Constitution of the Council
8. Objects and functions of the Council
9. Staff of the Council
10. Advisory functions of the Council
11. Advisory committees
12. Delegation by the Council

Division 2—The Commissioner for Vocational Training

13. Appointment of the Commissioner
14. Functions of the Commissioner
15. Delegation by the Commissioner

Division 3—The Vocational Training Board

16. Establishment of the Board
17. Functions of the Board
18. Sittings of the Board

Division 4—Training officers

19. Appointment of training officers
20. Functions of training officers

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING

Division 1—Establishment of training schemes

21. Declared vocations
22. Vocational training orders
23. Vocational training guidelines

Division 2—Apprenticeships

24. Persons under 21 not to be employed in declared trades unless apprentices etc.
25. Applications for establishment of apprenticeships

Industrial and Commercial Training 1989

26. Compulsory applications for apprentices who are under 21
27. Determination of applications
28. Notice of determination
29. Commencement of apprenticeships
30. Commissioner may direct apprenticeship to have effect
31. Conditions of apprenticeship
32. Vocational training directions
33. Previous time as probationary apprentice to form part of term of apprenticeship
34. Remuneration of adult apprentices
35. Extent to which apprenticeships are binding
36. Duties under apprenticeships
37. Courses of studies
38. Assignment of indentured apprenticeships
39. Cancellation and suspension of apprenticeships by consent
40. Variation of apprenticeships
41. Death of employer etc.
42. Effect of change of composition in partnership etc.
43. Completion of apprenticeship
- Division 3—Traineeships
44. Applications for approval as a recognised trainee employer
45. Recognised trainee employers may enter traineeships
46. Applications for establishment of traineeships
47. Notice of determination
48. Commencement of traineeships
49. Conditions of traineeship
50. Vocational training directions
51. Previous time as trainee to form part of term of traineeship
52. Remuneration of adult trainees
53. Extent to which traineeships are binding
54. Duties under traineeships
55. Courses of studies
56. Assignment of traineeships
57. Cancellation of traineeships by consent
58. Variation of traineeships
59. Death of employer etc.
60. Effect of change of composition of partnership etc.
61. Completion of traineeship
- Division 4—General
62. Apprenticeships etc. presumed to benefit apprentices etc.
63. Premiums etc. for entering apprenticeships etc.
64. Probationary apprentices not to be employed otherwise than in accordance with relevant vocational training order

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

- Division 1—Complaints
65. Complaints to be made to the Commissioner
66. Commissioner to refer complaints to the Board
67. Suspension of apprenticeships etc. pending hearing
68. Board to fix time and place for hearing complaints
69. Parties
- Division 2—Hearings
70. Procedure generally
71. Legal representation
72. Attendance of witnesses etc.

Industrial and Commercial Training 1989

- 73. Witnesses to answer questions
- 74. Refusal to attend or to answer questions etc.
- 75. Witnesses' expenses
- 76. Adjournments
- 77. Misconduct
- 78. Costs

Division 3—Determinations

- 79. Conciliation
- 80. Determinations

PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

- 81. Recognition of Defence Force trade training
- 82. Recognition of other qualifications
- 83. Recognition of other trade training

PART 6—REVIEW AND APPEALS

Division 1—Review

- 84. Review by the Council

Division 2—Appeals

- 85. Constitution of the Appeal Panel
- 86. Appeals
- 87. Sittings of the Appeal Panel
- 88. Determination of appeals

PART 7—MISCELLANEOUS

- 89. Powers of entry to premises etc.
- 90. Search warrants
- 91. Obstruction etc. of training officers
- 92. False or misleading information
- 93. Disclosure of business information
- 94. Proceedings for offences
- 95. Applications and notices
- 96. Evidentiary certificates
- 97. Publication of certain matters
- 98. Liability
- 99. Reports
- 100. Regulations
- 101. Repeals
- 102. Savings, transitional and other provisions

SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

SCHEDULE 2—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD

SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE VOCATIONAL TRAINING BOARD

SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE APPEAL PANEL

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, , 1989*

NEW SOUTH WALES



Act No. , 1989

An Act to establish the Industrial and Commercial Training Council and the Vocational Training Board; to define the functions of those bodies; to provide for the regulation of apprenticeships and traineeships; and for other purposes.

See also Industrial Arbitration (Industrial and Commercial Training) Amendment Bill 1989; Miscellaneous Acts (Industrial and Commercial Training) Amendment Bill 1989.

Industrial and Commercial Training 1989

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Industrial and Commercial Training Act
5 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation.

- (2) Different days may be appointed for the commencement of section
10 101 in its application to different Acts or to different provisions of the same Act.

Object of Act

3. The object of this Act is to promote training within industry and commerce.

15 Definitions

4. (1) In this Act—

“advisory committee” means an advisory committee established under section 11;

“Appeal Panel” means the Appeal Panel constituted by section 85;

- 20 “apprentice” means a probationary apprentice, an indentured apprentice or a trainee apprentice;

“apprenticeship” means an apprenticeship established under Division 2 of Part 3;

- 25 “Board” means the Vocational Training Board of New South Wales constituted by section 16;

“certificate of completion” means a certificate issued under section 61, and includes a certificate of proficiency issued under that section;

“certificate of identification” means a certificate of identification issued under section 89;

- 30 “Commissioner” means the Commissioner for Vocational Training referred to in section 13;

“conciliation committee” means a conciliation committee established under section 18 of the Industrial Arbitration Act 1940;

- 35 “Council” means the Industrial and Commercial Training Council of New South Wales constituted by section 7;

“craft certificate” means a craft certificate issued under section 43, 81, 82 or 83, and includes a certificate of proficiency issued under any of those sections;

Industrial and Commercial Training 1989

- “declared calling” means a vocation that is the subject of an order in force under section 21 by which the vocation is designated to be a declared calling for the purposes of this Act;
- 5 “declared trade” means a vocation that is the subject of an order in force under section 21 by which the vocation is designated to be a declared trade for the purposes of this Act;
- “Department” means the Department of Industrial Relations and Employment;
- “employer”, in relation to an apprentice or trainee, means—
- 10 (a) the person who is, pursuant to an apprenticeship or traineeship, the employer of the apprentice or trainee; or
- (b) the person who is, in the case of a probationary apprentice, the person by whom the apprentice is for the time being actually employed;
- 15 “indentured apprentice” means an employee who is a party to an indentured apprenticeship;
- “probationary apprentice” means a person who is employed as an apprentice in a declared trade but in respect of whom—
- 20 (a) an application for establishment of an apprenticeship has yet to be made; or
- (b) such an application has been made but has yet to be determined; or
- (c) such an application has been approved but an apprenticeship between the employer and the apprentice has yet to take effect;
- 25 “public servant” means an officer or temporary employee within the meaning of the Public Sector Management Act 1988;
- “qualified tradesperson”, in relation to a trade, means—
- (a) a person who has a craft certificate in respect of that trade; or
- 30 (b) a person who has qualifications and experience that, pursuant to a determination under section 81, 82 or 83, entitle the person to a craft certificate under any of those sections;
- “recognised educational establishment” means—
- (a) a college of technical and further education, a college of advanced education or a university; or
- 35 (b) an establishment that is approved for the time being by the Council or that belongs to a class of establishments so approved;
- “recognised trainee employer” means an employer who is approved as a recognised trainee employer under section 44;
- 40 “required course of on-the-job training”, in relation to an apprentice or trainee who is employed in a declared trade or declared calling, means—

Industrial and Commercial Training 1989

(a) the course of on-the-job training that an apprentice or trainee is required by a vocational training order to undertake in connection with that trade or calling; or

5 (b) if a vocational training direction allows the apprentice or trainee to undertake an alternative course of on-the-job training—the alternative course of on-the-job training;

“required course of studies”, in relation to an apprentice or trainee who is employed in a declared trade or declared calling, means—

10 (a) the course of studies that an apprentice or trainee is required by a vocational training order to undertake in connection with that trade or calling; or

(b) if a vocational training direction allows the apprentice or trainee to undertake an alternative course of studies—the alternative course of studies;

15 “Secretary” means the Secretary of the Department;

“trainee” means an employee who is a party to a traineeship;

“trainee apprentice” means an employee who is a party to a trainee apprenticeship;

20 “traineeship” means a traineeship established under Division 3 of Part 3;

“training officer” means a training officer appointed under section 19;

“vocation” includes trade and calling;

“vocational training direction” means a direction in force under section 32 or 50;

25 “vocational training guideline” means a guideline in force under section 23;

“vocational training order” means an order in force under section 22.

(2) In this Act—

30 (a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Relationship with Industrial Arbitration Act 1940

5. In the event of an inconsistency between—

35 (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 Arbitration Act 1940, or of any regulation, order, industrial award or industrial agreement made under that Act,

Industrial and Commercial Training 1989

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

Act binds Crown

6. 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.

PART 2—ADMINISTRATION

Division 1—The Industrial and Commercial Training Council

Constitution of the Council

- 10 7. (1) There is constituted by this Act a body corporate under the corporate name of the Industrial and Commercial Training Council of New South Wales.
- (2) The Council shall consist of 13 members, of whom—
- (a) 1 shall be the Secretary; and
- 15 (b) 1 shall be the Commissioner; and
- (c) 8 shall be appointed by the Minister from persons having knowledge and experience relating to industrial or commercial training; and
- (d) 2 shall be appointed by the Minister, on the nomination of the Minister for Education and Youth Affairs, of whom 1 shall be
- 20 appointed to represent the Department of Technical and Further Education; and
- (e) 1 shall be appointed by the Minister on the nomination of the Commonwealth Minister for Employment, Education and Training.
- (3) The Secretary shall be the Chairperson of the Council.
- 25 (4) The Council—
- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown; and
- 30 (c) is, in the exercise of its functions, subject to the control and direction of the Minister.
- (5) Schedule 1 has effect with respect to the members of the Council.
- (6) Schedule 2 has effect with respect to the procedure of the Council.

Objects and functions of the Council

- 35 8. (1) The objects of the Council are—

Industrial and Commercial Training 1989

- (a) to investigate matters relating to industrial and commercial employment and to the need for industrial and commercial training; and
- 5 (b) to advise the Minister on matters relating to existing and proposed courses of industrial and commercial training; and
- (c) to approve courses of industrial and commercial training to be undertaken by apprentices and trainees under this Act; and
- (d) to supervise the provision of industrial and commercial training conducted under this Act; and
- 10 (e) to monitor the provision of industrial and commercial training conducted otherwise than under this Act.

(2) The Council has such functions as are necessary or convenient to enable it to achieve its objects.

Staff of the Council

- 15 9. (1) Such staff as may be necessary to enable the Council to exercise its functions shall be employed under the Public Sector Management Act 1988.

(2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an
20 administrative office or a public or local authority.

(3) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (2), is an officer of the Council.

Advisory functions of the Council

- 25 10. (1) The Council may, and when requested by the Minister to do so shall, report to the Minister on—

- (a) changes in the nature of industry and commerce and the consequence of such changes on the need for industrial and commercial training and the way in which such training should be
30 conducted; and
- (b) the need to promote a greater amount and a higher standard of training in and for industry and commerce; and
- (c) the desirability for and the economic feasibility of providing accreditation, certification and approval of different types of
35 industrial and commercial training; and
- (d) the need for the provision of training personnel in industry and commerce; and
- (e) the manner of achieving increased consultation and co-operation on industrial and commercial training matters at places of work; and

Industrial and Commercial Training 1989

- (f) the methods for publicising the benefits to be derived from industrial and commercial training by individuals and by industry and commerce generally; and
- 5 (g) the particular action which can be taken to create additional training and employment opportunities for school leavers and other young people, retrenched employees, women seeking to rejoin the workforce, disabled people, Aborigines, migrants (particularly those with English language problems) and other disadvantaged persons or identifiable groups of persons; and
- 10 (h) the vocations to which this Act should be applied; and
- (i) other matters in relation to skill formation; and
- (j) the desirability of—
 - (i) amending this Act or the regulations; or
 - 15 (ii) developing new administrative procedures or varying existing administrative procedures,
 so as to facilitate the provision of effective industrial and commercial training.
- (2) In the exercise of its functions under this section, the Council shall have particular regard to the need for promoting, to the greatest extent
- 20 practicable, the efficient and economic use of resources for industrial and commercial training.
- (3) For the purpose of exercising its functions under this section, the Council may confer with any person or body, whether in New South Wales or elsewhere.
- 25 (4) A report made by the Council may contain such recommendations in relation to the matters dealt with in the report as the Council considers appropriate.
- (5) One or more members of the Council may prepare a minority report in connection with any matter dealt with in a report made by the Council.
- 30 (6) A minority report shall form part of the report made by the Council.

Advisory committees

- 11. (1) The Council may establish advisory committees to assist it in the exercise of its functions.
- (2) Any or all of the members of an advisory committee may be persons
- 35 who are not members of the Council.
- (3) Without limiting the generality of subsection (2), the membership of an advisory committee may comprise the members of the Board or of any other body, including any body in the nature of an industry training committee, whether established in New South Wales or elsewhere.

Industrial and Commercial Training 1989

(4) The procedure for the calling of meetings of an advisory committee, and for the conduct of business at those meetings, shall be as determined by the committee.

(5) The first meeting of an advisory committee shall be called in such manner as the Council may determine.

Delegation by the Council

12. The Council may delegate to any person or body, or to any person or body belonging to a specified class of persons or bodies, any of its functions, other than this power of delegation.

10 **Division 2—The Commissioner for Vocational Training**

Appointment of the Commissioner

13. The Governor may, under and in accordance with the Public Sector Management Act 1988, appoint a Commissioner for Vocational Training.

Functions of the Commissioner

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

Delegation by the Commissioner

20 15. The Commissioner may delegate to any person, or to any person belonging to a specified class of persons, any of the Commissioner's functions (including his or her functions as member or Chairperson of the Board), other than this power of delegation.

Division 3—The Vocational Training Board

Establishment of the Board

16. (1) There shall be a Vocational Training Board of New South Wales.

25 (2) The Board shall consist of at least 4 members, of whom—

 (a) 1 shall be the Commissioner; and

 (b) at least 1 shall be a person nominated for the time being by the Director-General of Technical and Further Education for the purposes of this paragraph; and

30 (c) at least 1 shall be a person appointed by the Minister to represent employers; and

 (d) at least 1 shall be a person appointed by the Minister to represent employees.

(3) The Commissioner is the Chairperson of the Board.

35 (4) Schedule 3 has effect with respect to the members of the Board.

Industrial and Commercial Training 1989

(5) Schedule 4 has effect with respect to the procedure of the Board.

Functions of the Board

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

5 Sittings of the Board

18. (1) The Board shall, for the purpose of exercising its functions, be constituted by at least 4 of its members, of whom—

- (a) 1 shall be the Commissioner or a person to whom the Commissioner has delegated his or her functions as Chairperson of the Board; and
- 10 (b) 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (b); and
- (c) at least 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (c); and
- 15 (d) at least 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (d).

(2) The number of members appointed from among the persons referred to in section 16 (2) (c) shall be the same as the number of members appointed from among the persons referred to in section 16 (2) (d).

(3) More than 1 sitting of the Board may be held at any 1 time.

- 20 (4) At any sitting of the Board, the Commissioner, or a person to whom the Commissioner has delegated his or her functions as Chairperson of the Board, shall be taken to be the Chairperson of the Board.

Division 4—Training officers

Appointment of training officers

- 25 19. (1) The Commissioner may appoint such persons (whether public servants or otherwise) as the Commissioner thinks fit to be training officers, either for particular declared trades or declared callings or for declared trades and declared callings generally.

- 30 (2) A training officer (other than a public servant) is entitled to such remuneration as the Commissioner may, with the approval of the Minister, determine in respect of the officer.

Functions of training officers

20. The functions of a training officer are—

- 35 (a) to monitor the training provided by employers to apprentices and trainees; and
- (b) to report to the Commissioner on the adequacy of such training, either generally or in a particular case; and

Industrial and Commercial Training 1989

- (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 training being provided to them by employers; and
 - 5 (e) to exercise such other functions as are conferred or imposed on training officers by or under this Act,
- in connection with each trade or calling in respect of which the officer is appointed.

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING10 **Division 1—Establishment of training schemes****Declared vocations**

21. (1) The Minister may, by order published in the Gazette, designate any vocation to be a declared trade or declared calling for the purposes of this Act.
- 15 (2) The same vocation may be both a declared trade and a declared calling.

Vocational training orders

22. (1) The Council may from time to time make orders specifying, in relation to a particular declared trade or declared calling—
- 20 (a) the appropriate term of apprenticeship or traineeship in that trade or calling; and
- (b) the appropriate courses of studies to be undertaken by apprentices or trainees in that trade or calling; and
- 25 (c) the appropriate courses of on-the-job training to be provided to apprentices or trainees by employers in that trade or calling; and
- (d) such other matters relating to the training of apprentices or trainees in that trade or calling as the Council considers appropriate.
- (2) Such an order applies to an apprenticeship or traineeship whether or not the apprenticeship or traineeship was established before the order took
- 30 effect, but does not, unless it expressly so provides, affect—
- (a) any vocational training direction in force in respect of the apprenticeship or traineeship; or
- (b) any course of studies or course of on-the-job training that is being undertaken, or that has been completed, by apprentices or trainees
- 35 in that trade or calling,
- prior to the making of the order.
- (3) An order made under this section takes effect when notice of its making is published in the Gazette.

Industrial and Commercial Training 1989

(4) Such a notice shall identify the order, shall contain brief particulars of the substance of the order and shall specify that a copy of the order may be obtained from the offices of the Department.

(5) Copies of each order made under this section shall be kept at the offices of the Department and shall be made available for public inspection free of charge, and for purchase, during ordinary office hours.

Vocational training guidelines

23. (1) The Council may from time to time issue guidelines, in relation to a particular declared trade or declared calling or in relation to declared trades or declared callings generally, as to how the functions under this Part in respect of any such trade or calling shall be exercised by the Board or by the Commissioner.

(2) Copies of each guideline issued under this section shall be kept at the offices of the Department and shall be made available for public inspection free of charge, and for purchase, during ordinary office hours.

Division 2—Apprenticeships

Persons under 21 not to be employed in declared trades unless apprentices etc.

24. (1) An employer shall not employ a person who is under the age of 21 years in a declared trade unless the employed person is an apprentice or qualified tradesperson in that trade.

Maximum penalty: 10 penalty units.

(2) This section does not apply to—

- (a) the employment of a person in a declared trade that is also a declared calling; or
- (b) the employment of a person in a declared trade by a parent of the person; or
- (c) the employment of a person in a declared trade, or in any area of a declared trade, that is exempted by the regulations from the operation of this section.

(3) An employer shall not employ a person as a probationary apprentice in a declared trade for a period of, or for periods totalling, more than 3 months, otherwise than with the consent of the Commissioner.

Maximum penalty: 5 penalty units.

(4) The Commissioner may consent to the employment of a person as a probationary apprentice for a further period of, or for further periods totalling, not more than 3 months.

Industrial and Commercial Training 1989

Applications for establishment of apprenticeships

25. (1) An employer who employs a person in a declared trade may apply to the Commissioner for the establishment of an apprenticeship for the person.

- 5 (2) An application for establishment of an apprenticeship shall specify whether the proposed apprenticeship is to be served under an indentured apprenticeship or under a trainee apprenticeship.

Compulsory applications for apprentices who are under 21

- 10 26. (1) An employer who employs a person (being a person who is under the age of 21 years) as a probationary apprentice in a declared trade shall, within 14 days after the person is first employed by the employer, apply to the Commissioner for the establishment of an apprenticeship in that trade for the person.

Maximum penalty: 5 penalty units.

- 15 (2) Nothing in this section prevents an application that is made later than 14 days after the person is first employed from being considered under this Division.

Determination of applications

- 20 27. (1) The Commissioner shall deal with an application for establishment of an apprenticeship—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

- 25 (2) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

- 30 (3) An application for establishment of an apprenticeship shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the prospective employer has the ability to provide proper training in the relevant trade.

Notice of determination

- 35 28. (1) As soon as practicable after an application for establishment of an apprenticeship has been determined, the Commissioner shall cause notice of the determination, together with a copy of any vocational training direction made in relation to the application, to be given to the applicant.

Industrial and Commercial Training 1989

(2) If the application specifies that the proposed apprenticeship is to be served under an indentured apprenticeship, the Commissioner shall, within 3 months after the application is approved, cause indentures (in such form as may be approved for the time being by the Commissioner) to be sent to the employer for execution by the employer and by the apprentice.

(3) If the application specifies that the proposed apprenticeship is to be served under a trainee apprenticeship, the Commissioner shall, as soon as practicable after the application is approved, cause a progress card to be sent to the employer for use in recording the progress of the apprentice.

(4) An employer to whom indentures are sent under this section shall return the indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer.

Maximum penalty: 10 penalty units.

Commencement of apprenticeships

29. (1) An indentured apprenticeship takes effect when indentures—
 (a) signed by the employer and by the apprentice; and
 (b) in the case of an apprentice who is under the age of 18 years—
 accompanied by the written consent of a parent or guardian of the apprentice to the establishment of the apprenticeship,
 are lodged with the Commissioner.

(2) A trainee apprenticeship takes effect on such date as is specified in that regard on the progress card sent to the employer in respect of the apprenticeship.

Commissioner may direct apprenticeship to have effect

30. (1) If an employer—
 (a) fails to make an application for the establishment of an apprenticeship within 3 months after a probationary apprentice who is under the age of 21 years is first employed by the employer; or
 (b) fails to return indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer under section 28,

the Commissioner may, on the application of the apprentice, direct that an indentured apprenticeship be taken to have come into effect, as from the expiry of that period, between the employer and the apprentice.

(2) As soon as practicable after giving such a direction, the Commissioner shall cause indentures, endorsed by the Commissioner in such manner as the Commissioner may determine, to be sent to the employer and to the apprentice.

Industrial and Commercial Training 1989

Conditions of apprenticeship

31. Except as otherwise provided by a vocational training direction, the conditions of an apprenticeship, including—

- (a) the term of the apprenticeship; and
 - 5 (b) the course of studies to be undertaken by the apprentice; and
 - (c) the course of on-the-job training to be undertaken by the apprentice,
- shall be as specified by the relevant vocational training order.

Vocational training directions

32. (1) The Commissioner or the Board may, when determining an
10 application for establishment of an apprenticeship, make a vocational training direction in relation to the proposed apprenticeship.

(2) A vocational training direction may—

- (a) reduce or extend the term of the apprenticeship; or
- 15 (b) approve an alternative course of studies to be undertaken by the apprentice; or
- (c) approve an alternative course of on-the-job training to be undertaken by the apprentice.

(3) In making a vocational training direction, the Commissioner or the Board—

- 20 (a) shall have regard to any relevant instruction or training that the apprentice has received—
 - (i) whether as an apprentice or otherwise; and
 - (ii) whether in the particular trade or in some other trade or calling; and
- 25 (iii) whether in New South Wales or elsewhere; and
- (b) may have regard to any other matter that the Commissioner or the Board considers relevant; and
- (c) shall comply with any relevant vocational training guidelines.

30 **Previous time as probationary apprentice to form part of term of apprenticeship**

33. The period of time during which a person is a probationary apprentice in a declared trade shall, if the person subsequently becomes an apprentice under an apprenticeship in that trade, be taken to form part of the term of the person's apprenticeship.

35 **Remuneration of adult apprentices**

34. (1) If—

- (a) an apprenticeship is established in a declared trade for a person who is of or above the age of 21 years; and

Industrial and Commercial Training 1989

- (b) there is no industrial award or industrial agreement in force under which a rate of remuneration is set for apprentices in that trade who are of or above the age of 21 years, but there is such an award or agreement in force under which a rate of remuneration is set for apprentices who are under that age,
- 5 the minimum rate of remuneration for that person shall be the relevant rate of remuneration set by the award or agreement for apprentices in that trade who are under the age of 21 years, being apprentices who are at the same stage of apprenticeship in that trade.
- 10 (2) A rate of remuneration set by this section has effect as if it formed part of an industrial award 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
- 15 and an apprentice if the employer is a parent of the apprentice.

Extent to which apprenticeships are binding

35. (1) Duly executed indentures that have been returned to the Commissioner (including indentures endorsed by the Commissioner in accordance with section 30)—
- 20 (a) have effect as if they were a deed duly executed by the employer and by the apprentice; and
- (b) bind the employer and the apprentice throughout the term of the apprenticeship.
- (2) A trainee apprenticeship binds the employer and the apprentice for
- 25 so long as the apprentice remains in the employ of the employer.

Duties under apprenticeships

36. (1) The employer of an apprentice shall—
- (a) take all reasonable steps to cause the apprentice to be instructed in the skills of the declared trade in which he or she is an apprentice;
- 30 and
- (b) provide all necessary facilities to ensure that the apprentice receives appropriate practical training in that trade; and
- (c) take all reasonable steps to enable the apprentice to undertake and complete the required course of studies and the required course of
- 35 on-the-job training for that trade; and
- (d) give the apprentice all reasonable opportunities to receive such other instruction or training as may be necessary to enable the apprentice to learn the skills of that trade; and
- (e) discharge his or her obligations as an employer of the apprentice.
- 40 (2) An apprentice shall—

Industrial and Commercial Training 1989

- (a) make all reasonable efforts to acquire the skills of the trade in which he or she is an apprentice; and
- (b) accept all instruction and training in that trade given to the apprentice by or on behalf of the employer; and
- 5 (c) make all reasonable efforts to complete the required course of studies and the required course of on-the-job training for that trade; and
- (d) discharge his or her obligations as an employee of the employer.

Courses of studies

37. (1) An apprentice, in undertaking the required course of studies for the declared trade in which he or she is an apprentice, shall comply with the requirements of the recognised educational establishment by which the course is conducted.

(2) Time spent by an apprentice in undertaking any such course of studies shall be taken to form part of the time required by the apprenticeship to be spent in discharging his or her obligations under the apprenticeship.

Assignment of indentured apprenticeships

38. (1) An indentured apprenticeship may not be assigned from one employer to another otherwise than in accordance with this section.

(2) An application for approval to the assignment of an indentured apprenticeship may be made to the Commissioner by the prospective employer.

(3) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- 25 (c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

30 (5) An indentured apprenticeship shall not be assigned unless the Commissioner or the Board, as the case may be, is satisfied—

- (a) that the prospective employer has the ability to provide proper training in the relevant trade; and
- (b) that the apprentice consents to the assignment of the apprenticeship.

35 (6) If—

- (a) approval has been given to the assignment of an indentured apprenticeship; and

Industrial and Commercial Training 1989

(b) the Commissioner is satisfied that the apprentice's existing employer consents to the assignment,
the Commissioner shall effect the assignment by giving notice of the assignment to the existing employer, to the prospective employer and to the
5 apprentice.

(7) If the Commissioner—

- (a) sends a notice to an employer who is a party to an indentured apprenticeship—
 - 10 (i) addressed to the last address of the employer known to the Commissioner; and
 - (ii) requesting the employer to notify the Commissioner whether or not the employer consents to the assignment of the apprenticeship to another employer; and
- 15 (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,
the consent of the employer to whom the notice was sent shall be taken to have been given.

Cancellation and suspension of apprenticeships by consent

39. (1) An apprenticeship may be cancelled or suspended by consent of
20 the employer and of the apprentice.

(2) If the Commissioner—

- (a) sends a notice to the employer or to the apprentice—
 - (i) addressed to the last address of the person known to the Commissioner; and
 - 25 (ii) requesting the person to notify the Commissioner whether or not the person consents to the cancellation or suspension of the apprenticeship; and
- (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,
30 the consent of the person to whom the notice was sent shall be taken to have been given.

(3) Within 14 days after the cancellation or suspension of an apprenticeship, the employer concerned shall give notice of the cancellation or suspension to the Commissioner.

35 Maximum penalty: 5 penalty units.

Variation of apprenticeships

40. (1) An apprenticeship may not be varied otherwise than in accordance with this section.

Industrial and Commercial Training 1989

(2) An application for variation of an apprenticeship may be made to the Commissioner by the employer or by the apprentice.

(3) The Commissioner shall deal with the application—

- (a) by approving the application; or
- 5 (b) by dismissing the application; or
- (c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- 10 (b) by dismissing the application.

(5) An apprenticeship shall not be varied in a manner that contravenes any relevant vocational training guideline.

Death of employer etc.

41. (1) If—

- 15 (a) the employer of an apprentice dies; and
- (b) the business in which the apprentice 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 shall be taken not to have been determined by the death
20 of the employer.

(2) Unless cancellation of the apprenticeship is approved by the Board on the application of those executors or administrators, or of the apprentice, the apprenticeship continues to bind those executors or administrators as if they were the employers of the apprentice.

25 **Effect of change of composition in partnership etc.**

42. (1) If—

- (a) the employers of an apprentice are partners in a partnership; and
- (b) the business in which the apprentice is employed is carried on by the partners for the time being after a change in the composition of
30 the partnership,

the apprenticeship shall be taken not to have been determined by that change.

(2) Unless cancellation of the apprenticeship is approved by the Board on the application of those partners, or of the apprentice, the apprenticeship
35 continues to bind those partners as if they were the employers of the apprentice.

Completion of apprenticeship

43. (1) As soon as practicable after an apprentice completes his or her term of apprenticeship in a declared trade, the Commissioner shall, if satisfied that the apprentice is adequately trained to pursue that trade, cause
5 a craft certificate in that trade to be given to the apprentice.

(2) An apprentice who has completed his or her term of apprenticeship in a declared trade, and who has successfully completed the required course of studies for that trade, is entitled to be issued instead with a certificate of proficiency in that trade.

10

Division 3—Traineeships**Applications for approval as a recognised trainee employer**

44. (1) An employer in a declared calling may apply to the Commissioner for approval of the employer as a recognised trainee employer in that calling.

15 (2) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(3) The Board shall deal with an application referred to it under this
20 section—

- (a) by approving the application; or
- (b) by dismissing the application.

(4) An application for approval of an employer as a recognised trainee employer shall not be approved unless the Commissioner or the Board, as
25 the case may be, is satisfied that the employer has the ability to provide proper training in the relevant calling.

Recognised trainee employers may enter traineeships

45. (1) A recognised trainee employer who is engaged in a declared calling may enter into a traineeship in that calling with any of the employer's
30 employees.

(2) The indentures by which a recognised trainee employer and an employee enter into such a traineeship shall be in such form as may be approved for the time being by the Commissioner.

Applications for establishment of traineeships

35 46. (1) An employer (whether or not a recognised trainee employer) who employs a person in a declared calling may apply to the Commissioner for the establishment of a traineeship for the person.

Industrial and Commercial Training 1989

(2) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

5 (3) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

10 (4) An application for establishment of a traineeship shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the prospective employer has the ability to provide proper training in the relevant calling.

Notice of determination

15 47. (1) As soon as practicable after an application for establishment of a traineeship has been determined, the Commissioner shall cause notice of the determination, together with a copy of any vocational training direction made in relation to the application, to be given to the applicant.

20 (2) The Commissioner shall, within 3 months after the application is approved, cause indentures (in such form as may be approved for the time being by the Commissioner) to be sent to the employer for execution by the employer and by the trainee.

(3) An employer to whom indentures are sent under this section shall return the indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer.

25 Maximum penalty: 10 penalty units.

Commencement of traineeships

48. A traineeship takes effect when indentures—

- (a) signed by the employer and by the trainee; and
- (b) in the case of a trainee who is under the age of 18 years—
30 accompanied by the written consent of a parent or guardian of the trainee to the establishment of the traineeship,
are lodged with the Commissioner.

Conditions of traineeship

35 49. Except as otherwise provided by a vocational training direction, the conditions of a traineeship, including—

- (a) the term of the traineeship; and
- (b) the course of studies to be undertaken by the trainee; and

Industrial and Commercial Training 1989

(c) the course of on-the-job training to be undertaken by the trainee, shall be as specified by the relevant vocational training order.

Vocational training directions

50. (1) The Commissioner or the Board may, when determining an application for establishment of a traineeship, make a vocational training direction in relation to the proposed traineeship.

(2) A vocational training direction may—

- (a) reduce or extend the term of the traineeship; or
- (b) approve an alternative course of studies to be undertaken by the trainee; or
- (c) approve an alternative course of on-the-job training to be undertaken by the trainee.

(3) In making a vocational training direction, the Commissioner or the Board—

- (a) shall have regard to any relevant instruction or training that the trainee has received—
 - (i) whether as a trainee or otherwise; and
 - (ii) whether in the particular calling or in some other trade or calling; and
 - (iii) whether in New South Wales or elsewhere; and
- (b) shall comply with any relevant vocational training guidelines.

Previous time as trainee to form part of term of traineeship

51. The period of time during which a person is employed in a declared calling pending the establishment of traineeship in that calling shall, if the person subsequently becomes a trainee under a traineeship in that calling, be taken to form part of the term of the person's traineeship.

Remuneration of adult trainees

52. (1) If—

- (a) a traineeship is established in a declared calling for a person who is of or above the age of 21 years; and
- (b) there is no industrial award or industrial agreement in force under which a rate of remuneration is set for trainees in that calling who are of or above the age of 21 years, but there is such an award or agreement in force under which a rate of remuneration is set for trainees who are under that age,

the minimum rate of remuneration for that person shall be the highest minimum rate of remuneration set by the award or agreement for trainees in that calling who are under the age of 21 years.

Industrial and Commercial Training 1989

(2) A rate of remuneration set by this section has effect as if it formed part of an industrial award that applied to the person for whom it is set, and any remuneration payable under this section may be recovered accordingly.

- 5 (3) This section does not apply to a traineeship between an employer and a trainee if the employer is a parent of the trainee.

Extent to which traineeships are binding

53. Duly executed indentures that have been returned to the Commissioner—

- 10 (a) have effect as if they were a deed duly executed by the employer and by the trainee; and
 (b) bind the employer and the trainee throughout the term of the traineeship.

Duties under traineeships

- 15 54. (1) The employer of a trainee shall—

- (a) take all reasonable steps to cause the trainee to be instructed in the skills of the declared calling in which he or she is a trainee; and
 (b) provide all necessary facilities to ensure that the trainee receives appropriate practical training in that calling; and
 20 (c) take all reasonable steps to enable the trainee to undertake and complete the required course of studies and the required course of on-the-job training for that calling; and
 (d) give the trainee all reasonable opportunities to receive such other instruction or training as may be necessary to enable the trainee to
 25 learn the skills of that calling; and
 (e) discharge his or her obligations as an employer of the trainee.

- (2) A trainee shall—

- (a) make all reasonable efforts to acquire the skills of the calling in which he or she is a trainee; and
 30 (b) accept all instruction and training in that calling given to the trainee by or on behalf of the employer; and
 (c) make all reasonable efforts to complete the required course of studies and the required course of on-the-job training for that calling; and
 (d) discharge his or her obligations as an employee of the employer.

35 Courses of studies

55. (1) A trainee, in undertaking the required course of studies for the declared calling in which he or she is a trainee, shall comply with the requirements of the recognised educational establishment by which the course is conducted.

Industrial and Commercial Training 1989

(2) Time spent by a trainee in undertaking any such course of studies shall be taken to form part of the time required by the traineeship to be spent in discharging his or her obligations under the traineeship.

Assignment of traineeships

- 5 **56. (1)** A traineeship may not be assigned from one employer to another otherwise than in accordance with this section.

(2) An application for approval to the assignment of a traineeship may be made to the Commissioner by the prospective employer.

(3) The Commissioner shall deal with the application—

- 10 (a) by approving the application; or
 (b) by dismissing the application; or
 (c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

- 15 (a) by approving the application; or
 (b) by dismissing the application.

(5) A traineeship shall not be assigned unless the Commissioner or the Board, as the case may be, is satisfied—

- 20 (a) that the prospective employer has the ability to provide proper training in the relevant calling; and
 (b) that the trainee consents to the assignment of the traineeship.

(6) If—

- 25 (a) approval has been given to the assignment of a traineeship; and
 (b) the Commissioner is satisfied that the trainee's existing employer consents to the assignment,

the Commissioner shall effect the assignment by giving notice of the assignment to the existing employer, to the prospective employer and to the trainee.

(7) If the Commissioner—

- 30 (a) sends a notice to an employer who is a party to a traineeship—
 (i) addressed to the last address of the employer known to the Commissioner; and
 (ii) requesting the employer to notify the Commissioner whether or not the employer consents to the assignment of the traineeship to another employer; and
 (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,
- 35

Industrial and Commercial Training 1989

the consent of the employer to whom the notice was sent shall be taken to have been given.

Cancellation of traineeships by consent

57. (1) A traineeship may be cancelled by consent of the employer and of the trainee.

(2) If the Commissioner—

(a) sends a notice to the employer or to the trainee—

(i) addressed to the last address of the person known to the Commissioner; and

10 (ii) requesting the person to notify the Commissioner whether or not the person consents to the cancellation of the traineeship; and

(b) does not receive any reply to that request within 21 days after the date on which the notice was sent,

15 the consent of the person to whom the notice was sent shall be taken to have been given.

(3) Within 14 days after the cancellation of a traineeship, the employer concerned shall give notice of the cancellation to the Commissioner.

Maximum penalty: 5 penalty units.

20 **Variation of traineeships**

58. (1) A traineeship may not be varied otherwise than in accordance with this section.

(2) An application for variation of a traineeship may be made to the Commissioner by the employer or by the trainee.

25 (3) The Commissioner shall deal with the application—

(a) by approving the application; or

(b) by dismissing the application; or

(c) by referring the application to the Board.

30 (4) The Board shall deal with an application referred to it under this section—

(a) by approving the application; or

(b) by dismissing the application.

(5) A traineeship shall not be varied in a manner that contravenes any relevant vocational training guideline.

35 **Death of employer etc.**

59. (1) If—

Industrial and Commercial Training 1989

- (a) the employer of a trainee dies; and
 - (b) the business in which the trainee was employed is carried on by the executors or administrators for the time being of the will or estate of the deceased employer,
- 5 the traineeship shall be taken not to have been determined by the death of the employer.

(2) Unless cancellation of the traineeship is approved by the Board on the application of those executors or administrators, or of the trainee, the traineeship continues to bind those executors or administrators as if they
10 were the employers of the trainee.

Effect of change of composition of partnership etc.

60. (1) If—

- (a) the employers of a trainee are partners in a partnership; and
- (b) the business in which the trainee is employed is carried on by the
15 partners for the time being after a change in the composition of the partnership,

the traineeship shall be taken not to have been determined by that change.

(2) Unless cancellation of the traineeship is approved by the Board on the application of those partners, or of the trainee, the traineeship continues
20 to bind those partners as if they were the employers of the trainee.

Completion of traineeship

61. (1) As soon as practicable after a trainee completes his or her term of traineeship in a declared calling, the Commissioner shall, if satisfied that the trainee is adequately trained in that calling, cause a certificate of
25 completion in that calling to be given to the trainee.

(2) A trainee who has completed his or her term of traineeship in a declared calling, and who has successfully completed the required course of studies for that calling, is entitled to be issued instead with a certificate of proficiency in that calling.

30 **Division 4—General**

Apprenticeships etc. presumed to benefit apprentices etc.

62. In the application of the Minors (Property and Contracts) Act 1970 to—

- (a) an apprenticeship into which a minor has entered as an apprentice;
35 or
 - (b) a traineeship into which a minor has entered as a trainee,
- the participation by the minor in the apprenticeship or traineeship shall, in the absence of evidence to the contrary, be taken to be for the benefit of the minor.

*Industrial and Commercial Training 1989***Premiums etc. for entering apprenticeships etc.**

63. A person shall not—

(a) directly or indirectly—

(i) require or permit any other person to pay or to give; or

5 (ii) demand or receive from any other person,
any fee or reward; or

(b) require any other person to enter into any bond or guarantee,

for or with respect to that other person's entering into an apprenticeship or
traineeship with the first person, or with any other person, without having
10 first obtained the consent of the Board.

Maximum penalty: 10 penalty units.

**Probationary apprentices not to be employed otherwise than in accordance
with relevant vocational training order**

64. An employer shall not employ a probationary apprentice in a
15 declared trade otherwise than in accordance with the relevant vocational
training order.

Maximum penalty: 10 penalty units.

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

20

Division 1—Complaints

Complaints to be made to the Commissioner

65. (1) A complaint that a party to an apprenticeship or traineeship has
failed to discharge his or her obligations under the apprenticeship or
25 traineeship may be made—

(a) by the other party to the apprenticeship or traineeship; or

(b) by a training officer for the relevant trade or calling (other than a
training officer who is not a public servant).

(2) A complaint that a party to an apprenticeship or traineeship has
30 refused to consent to—

(a) the assignment of an indentured apprenticeship or traineeship; or

(b) the suspension or cancellation of an apprenticeship or traineeship,
may be made by the other party to the apprenticeship or traineeship.

(3) A complaint shall be lodged at, or sent by post to, the offices of the
35 Commissioner.

*Industrial and Commercial Training 1989***Commissioner to refer complaints to the Board**

66. (1) The Commissioner shall refer all complaints to the Board for determination by the Board.

(2) The Commissioner shall not refer to the Board a complaint made by a party to an apprenticeship or traineeship unless the Commissioner has attempted to bring each of the parties to the apprenticeship or traineeship to a settlement acceptable to all of them.

Suspension of apprenticeships etc. pending hearing

67. (1) If the Commissioner is satisfied that the gravity of a complaint justifies such action, the Commissioner may suspend the relevant apprenticeship or traineeship pending the hearing of the complaint.

(2) The suspension of an apprenticeship or traineeship under this section has effect until the complaint is withdrawn or determined.

(3) The suspension of an apprenticeship or traineeship under this section does not, of itself, affect the relationship between the employer and the apprentice or trainee otherwise than in relation to instruction and training.

Board to fix time and place for hearing complaints

68. The Board shall fix a time and place for the hearing of a complaint and shall cause notice of the time and place so fixed to be given to the complainant and to each of the parties to the relevant apprenticeship or traineeship.

Parties

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

25

Division 2—Hearings**Procedure generally**

70. (1) The Board is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) A hearing shall be conducted with as little formality and legal technicality as the circumstances of the case permit.

(3) A hearing shall be conducted in the absence of the public.

Legal representation

71. (1) A party to a hearing is not entitled to be represented by a barrister or solicitor except with the consent of the Board and of each of the other parties to the hearing.

Industrial and Commercial Training 1989

(2) This section—

(a) does not prevent a party from being represented by an industrial union of employers or employees; and

5 (b) does not prevent the Crown, or a party that is a corporation or an industrial union of employers or employees, from appearing by a barrister or solicitor.

(3) At any hearing at which the Crown, or a party that is a corporation or an industrial union of employers or employees, appears by a barrister or solicitor, each of the other parties to the hearing is entitled to be represented
10 at the hearing by a barrister or solicitor.

Attendance of witnesses etc.

72. (1) The Board—

(a) may require a person—

(i) to attend a hearing for the purpose of giving evidence; or

15 (ii) to produce to the Board any document that is relevant to a hearing,

at a time, date and place specified in a notice served on the person; and

20 (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 Board may retain possession of a document produced to it pursuant to this section for such period as it considers necessary for the
25 purpose of completing the hearing.

Witnesses to answer questions

73. (1) The Board may require a person who attends a hearing to answer any question that is reasonably related to the hearing.

30 (2) A person may refuse to answer a question on the ground that the answer might tend to incriminate the person.

Refusal to attend or to answer questions etc.

74. (1) A person—

35 (a) shall not fail to comply with a requirement to attend a hearing, or to produce a document or to answer a question, to the extent to which the person is lawfully able to comply with the requirement; and

Industrial and Commercial Training 1989

- (b) shall not, in purported compliance with a requirement to answer a question, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- 5 (2) Subsection (1) (b) does not apply to statements made on oath.

Witnesses' expenses

75. A person (other than a public servant) who is required to attend or to give evidence at a hearing is entitled to be paid such allowances and expenses as may be prescribed.

10 Adjournments

76. The Board may from time to time adjourn a hearing to such time, date and place, and for such reasons, as it considers fit.

Misconduct

77. A person shall not misconduct himself or herself at a hearing.

- 15 Maximum penalty: 5 penalty units.

Costs

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

Division 3—Determinations**Conciliation**

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

Determinations

- 25 80. (1) The Board shall determine a complaint made under section 65 (1)—
- 30 (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 Board considers appropriate; or
- (c) by varying, suspending or cancelling the apprenticeship or traineeship to which the complaint relates; or
- (d) by dismissing the complaint.

Industrial and Commercial Training 1989

(2) A complaint shall not be determined as referred to in subsection (1) (a), (b) or (c) unless the Board is satisfied that the person against whom the complaint has been made has failed to discharge his or her obligations under the apprenticeship or traineeship to which the complaint relates.

5 (3) The Board shall not cancel or suspend an apprenticeship or traineeship under subsection (1) unless it is satisfied that—

(a) one of the parties is unlikely to discharge his or her obligations under the apprenticeship or traineeship; and

(b) if that party is the employer—

10 (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 Board shall determine a complaint made under section 65 (2)—

15 (a) by directing that the requirement for consent referred to in that subsection be waived; or

(b) by dismissing the complaint.

(5) The Commissioner shall cause notice of the Board's determination to be given to each of the parties to the hearing.

20 (6) On the making of a determination that varies, suspends or cancels an apprenticeship or traineeship, the apprenticeship or traineeship shall be taken to be varied, suspended or cancelled, as the case may be, in accordance with the determination.

(7) If—

25 (a) the Board 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, pursuant to the terms of employment between the employer and the apprentice or trainee—

30 (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

35 (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 Board shall direct the employer to pay to the apprentice or trainee, and to contribute to any such scheme, an amount equivalent to the value of any

40 right or benefit that the employer has failed to give and the amount of any payment that the employer has failed to contribute.

(8) Such a direction—

- (a) shall specify each amount to be paid under the direction; and
- (b) shall, on the filing of the prescribed documents in the office or registry of a court having jurisdiction to order payment of an amount so specified, be taken to be a judgment of that court for that amount.

(9) The prescribed documents are—

- (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.

PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

Recognition of Defence Force trade training

81. (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 pursuant to 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 Board 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 declared trade will be accorded recognition in that trade.

(3) The Board may determine that the course of training provided for a class of service apprenticeship or service adult trade training in a declared trade 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 Board may determine,

is adequately trained to pursue that trade.

(4) A determination under this section—

- (a) shall be set out in an instrument signed by the Commissioner; and
 - (b) shall be filed by the Commissioner,
- and a copy of the instrument shall be sent by the Commissioner to the relevant Defence Force authority.

Industrial and Commercial Training 1989

(5) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to a person who satisfies the Commissioner that the person—

- 5 (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.

Recognition of other qualifications

10 82. (1) The Board may, on the application of any person or on its own motion, determine that a person—

- (a) who has specified qualifications in a declared trade (being qualifications obtained elsewhere than in New South Wales); and
 - (b) who complies with such further conditions as to experience or otherwise as the Board may determine,
- 15 is adequately trained to pursue that trade.

(2) A determination under this section—

- (a) shall be set out in an instrument signed by the Commissioner; and
- (b) shall be filed by the Commissioner.

20 (3) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to a person who satisfies the Commissioner that the person—

- (a) has the qualifications to which such a determination relates; and
- (b) has complied with any other conditions prescribed by the determination.

25 Recognition of other trade training

83. (1) A person may apply to the Commissioner for recognition of the person's qualifications or experience in a particular declared trade.

(2) The Commissioner shall refer the application to the Board.

30 (3) If the Board is satisfied that the applicant has acquired the skills of the declared trade, it may determine that the applicant is adequately trained to pursue that trade.

(4) In making such a determination, the Board shall have regard to—

- (a) the length of time for which the applicant has been working in the declared trade; and
- 35 (b) the nature and duration of any instruction or training received by the applicant in the declared trade; and
- (c) the nature of any qualifications held by the applicant in relation to the declared trade; and

Industrial and Commercial Training 1989

(d) such other matters (including the applicant's performance in any examination or test set by the Board) as it considers relevant.

(5) A determination under this section—

(a) shall be set out in an instrument signed by the Commissioner; and

5 (b) shall be filed by the Commissioner.

(6) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to the person to whom the determination relates.

PART 6—REVIEW AND APPEALS

10

Division 1—Review

Review by the Council

84. (1) The Board may, and when requested by the Council shall, refer to the Council any matter that is before the Board for determination under Part 3 or 5.

15 (2) The Council may determine any matter referred to it under this section or may refer the matter back to the Board for determination by the Board.

(3) The provisions of Parts 3 and 5 apply to matter that is referred to the Council under this section in the same way as they apply to matter
20 before the Board.

(4) The Council may not delegate its functions under this section.

Division 2—Appeals

Constitution of the Appeal Panel

85. (1) There shall be an Appeal Panel.

25 (2) The Appeal Panel shall consist of at least 3 persons, of whom—

(a) at least 1 shall be an officer of the Department appointed by the Secretary; and

(b) at least 1 shall be a person appointed by the Minister to represent employers; and

30 (c) at least 1 shall be a person appointed by the Minister to represent employees.

(3) Schedule 5 has effect with respect to the members of the Appeal Panel.

Appeals

35 86. An appeal to the Appeal Panel may be made, in accordance with the regulations—

Industrial and Commercial Training 1989

- (a) from any decision by the Board or by the Commissioner dismissing an application for establishment of an apprenticeship or traineeship; or
- 5 (b) from any vocational training direction made by the Board or by the Commissioner; or
- (c) from any decision by the Board or by the Commissioner dismissing an application for approval to the assignment of an indentured apprenticeship or traineeship; or
- 10 (d) from any decision by the Board or by the Commissioner dismissing an application for variation of an apprenticeship or traineeship; or
- (e) from any decision by the Board or by the Commissioner pursuant to which an apprenticeship or traineeship has been varied; or
- (f) from any refusal by the Commissioner to issue a craft certificate or certificate of completion under Part 3 or 5; or
- 15 (g) from any decision by the Board or by the Commissioner dismissing an application for approval as a recognised trainee employer; or
- (h) from any decision by the Commissioner refusing to refer a complaint under Part 4 for determination by the Board; or
- 20 (i) from any determination by the Board in respect of a complaint under Part 4; or
- (j) from any determination by the Board under section 83 that denies recognition of a person's qualifications or experience in a particular declared trade; or
- 25 (k) from any decision by the Council in the exercise of its functions under section 84.

Sittings of the Appeal Panel

87. (1) The Appeal Panel shall, for the purposes of hearing and determining an appeal, be constituted by 3 of its members, of whom—

- 30 (a) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (a); and
- (b) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (b); and
- (c) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (c).

- 35 (2) The person referred to in subsection (1) (a) shall be the presiding member of the Appeal Panel for the purposes of the appeal in respect of which the Appeal Panel is constituted.

- 40 (3) When constituted for the purposes of hearing and determining an appeal from a decision or determination by the Board, the Appeal Panel shall not be constituted so as to include a member of the Appeal Panel who is also a member of the Board.

Industrial and Commercial Training 1989

- (4) More than 1 sitting of the Appeal Panel may be held at any 1 time.

Determination of appeals

88. (1) An appeal shall be dealt with by way of a new hearing, and fresh evidence or fresh information may be given on the appeal.

- 5 (2) The provisions of Division 2 of Part 4 apply to proceedings before the Appeal Panel in the same way as they apply to proceedings before the Board under that Part.

- (3) The provisions of Division 3 of Part 4 apply to proceedings before the Appeal Panel on an appeal from a determination by the Board under
10 Part 4 in the same way as they apply to proceedings before the Board under that Part.

(4) The decision of the Appeal Panel is final and shall be given effect to as if it were the decision of the person or body in respect of whose decision, determination, action or failure to act the appeal has been made.

15

PART 7—MISCELLANEOUS**Powers of entry to premises etc.**

89. (1) A training officer may exercise any one or more of the following powers:

- 20 (a) such an officer may enter any premises or place in or on which a declared trade or declared calling is conducted;
- (b) such an officer may examine—
- 25 (i) any plant, equipment, material or substance used in relation to any such trade or calling; and
- (ii) any document relating to any such trade or calling,
- found in or on the premises or place;
- (c) such an officer may take copies of, or extracts or notes from, any document relating to any such trade or calling found in or on the premises or place;
- 30 (d) such an 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 trade or calling; or
- (ii) any document relating to any such trade or calling,
- that is in the possession or under the control of that person.

- 35 (2) A person shall not fail to comply with a requirement made by a training officer under subsection (1) (d).

Maximum penalty: 10 penalty units.

Industrial and Commercial Training 1989

(3) A 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
5 found in or on any residential premises.

(5) In exercising in or on any premises or place any power conferred by this section, a training officer—

10 (a) shall, 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) shall, as far as practicable, avoid doing anything which is likely to impede the lawful conduct of any trade or calling being carried out in or on the premises or place.

15 (6) A training officer shall, for the purposes of this section, be issued with a certificate of identification that is in or to the effect of the prescribed form.

(7) A training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

Search warrants

20 90. (1) A training officer may apply to an authorised justice 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.

25 (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a 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.

30 (3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

(a) may accompany a training officer executing a search warrant issued under this section; and

35 (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) In this section—

“authorised justice” means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Industrial and Commercial Training 1989

(6) A training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

Obstruction etc. of training officers

91. A person shall not assault, delay, obstruct, hinder or impede a training officer in the exercise of the officer's functions under this Act.

Maximum penalty: 10 penalty units.

False or misleading information

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

Maximum penalty: 20 penalty units.

Disclosure of business information

93. (1) A person shall not disclose any business information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

(2) In this section—

“business information” means—

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

Proceedings for offences

94. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before an industrial magistrate or before a Local Court constituted by a Magistrate sitting alone.

Industrial and Commercial Training 1989

(2) Proceedings for an offence against this Act or the regulations shall not be instituted otherwise than by—

(a) the Minister or the Commissioner; or

5 (b) a person duly authorised by the Minister or the Commissioner in that behalf, either generally or in a particular case.

Applications and notices

95. (1) An application that, pursuant to this Act or the regulations, may be made to the Commissioner or to the Board—

10 (a) shall be in such form as may be approved for the time being by the Commissioner; and

(b) shall be lodged at, or sent by post to, the offices of the Commissioner.

(2) A notice that the Commissioner is required or permitted to cause to be given 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
15 Commissioner.

Evidentiary certificates

96. 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 a training officer; or

20 (b) a specified person was or was not a party to an apprenticeship or traineeship; or

(c) the provisions of a specified apprenticeship or traineeship were or were not in specified terms; or

25 (d) the provisions of a specified vocational training direction were or were not in specified terms,

is admissible in any proceedings and is evidence of the fact or facts so certified.

Publication of certain matters

30 97. (1) It is sufficient compliance with a requirement of this Act that matter be published in the Gazette if the matter is instead published in the Industrial Gazette.

(2) Evidence of any such matter may be given by the production of a copy of the Gazette, or of the Industrial Gazette, in which the matter has been published.

35 Liability

98. No matter or thing done by—

(a) the Council or any member of the Council; or

(b) the Commissioner; or

Industrial and Commercial Training 1989

- (c) the Board or any member of the Board; or
 - (d) a training officer; or
 - (e) any person acting under the direction of the Council, the Board or the Commissioner,
- 5 shall, if the matter or thing was done in good faith for the purposes of executing this Act, subject any member of the Council, the Commissioner, any member of the Board, any training officer or any person so acting, personally, to any action, liability, claim or demand.

Reports

- 10 **99. (1)** As soon as practicable after 30 June, but no later than 31 December, in each year, the Chairperson of the Council shall prepare and forward to the Minister a report on the work and activities of the Council for the period of 12 months ending on 30 June in that year.
- (2) The Minister shall lay the report or cause it to be laid before both
15 Houses of Parliament as soon as practicable after receiving it.
- (3) Without limiting the generality of subsection (1), the Chairperson of the Council shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Council.
- 20 **(4)** A report shall deal with such matters as the Minister directs and with such other matters as the Chairperson of the Council considers appropriate to include in the report.

Regulations

- 25 **100. (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
 - 30 (b) the terms and conditions of apprenticeships and traineeships; and
 - (c) the registration of employers in connection with apprenticeships and traineeships; and
 - (d) the proportion of apprentices to skilled tradesmen who may be employed by employers in specified trades; and
 - 35 (e) the instruction and practical training to be provided for and undertaken by apprentices and trainees; and
 - (f) the supervision of apprentices and trainees by their employers; and
 - (g) the facilities to be provided for apprentices and trainees for the purpose of their being trained by their employers; and

Industrial and Commercial Training 1989

- (h) the temporary transfer of apprentices and trainees to the service of alternative employers; and
- (i) the issue, renewal, transfer and cancellation of progress cards in relation to apprentices, the completion of such cards and their return to the Commissioner; and
- (j) the recognition of group training schemes; and
- (k) the keeping of records; and
- (l) the forms to be used for the purposes of this Act; and
- (m) any other matter relating to the instruction or practical training of apprentices and trainees by their employers.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Repeals

101. The Apprenticeship Act 1981 and the Commerce and Industry Training Council Act 1985 are repealed.

Savings, transitional and other provisions

102. Schedule 6 has effect.

SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

(Sec. 7)

Definitions

1. In this Schedule—

“appointed member” means a member of the Council referred to in section 7 (2) (c), (d) or (e).

Acting members

2. (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member and the person, while so acting, has all the functions of the member and shall be taken to be the member.

(2) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

(3) A person, while acting in the office of an appointed member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of an appointed member shall be regarded as an absence from office of the member.

Chairperson may appoint alternate

3. (1) The Chairperson of the Council may, by instrument in writing, appoint a person to act as his or her alternate.

Industrial and Commercial Training 1989

**SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

(2) An alternate appointed under this clause, while so appointed, has all the functions of the Chairperson of the Council and shall be taken to be the Chairperson.

(3) The appointment of an alternate under this clause does not prevent the Chairperson of the Council from exercising the functions of Chairperson.

5 Term of office

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

Remuneration

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

Vacancy in office of member

6. (1) The office of an appointed member becomes vacant if the member—
- 15 (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister; or
- 20 (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- 25 (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- 30 (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- 35 (2) The Minister may remove an appointed member from office at any time.

(3) Without affecting the generality of subclause (2), the Minister may remove from office an appointed member who contravenes clause 8.

Filling of vacancy in office of member

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

*Industrial and Commercial Training 1989***SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued*****Disclosure of pecuniary interests**

8. (1) An appointed member who has a direct or indirect pecuniary interest—

(a) in a matter being considered or about to be considered at a meeting of the Council; or

5 (b) in a thing being done or about to be done by the Council,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by an appointed member at a meeting of the Council that the member—

10 (a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

15 is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body, or to that person, which may arise after the date of the disclosure.

(3) The Council shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Council from time to time.

(4) After an appointed member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—

(a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or

25 (b) exercise any function under this Act with respect to that thing.

(5) A contravention of this clause does not invalidate any decision of the Council or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of an appointed member in a matter or thing that arises merely because—

30 (a) the member employs apprentices or trainees; or

(b) the member—

(i) is a member, or is in the employment, of a company or other body; or

(ii) is a partner, or is in the employment, of a person,

by which or by whom apprentices or trainees are employed.

35 (7) A reference in this clause to a meeting of the Council includes a reference to a meeting of a committee of the Council.

Effect of certain other Acts

9. (1) The Public Sector Management Act 1988 does not apply to an appointed member and such a member is not, as an appointed member, subject to that Act, Part 8 excepted.

(2) If, by or under any other Act, provision is made—

Industrial and Commercial Training 1989

**SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- 5 the provision does not operate to disqualify the person from holding that office and also the office of a member of the Council or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of an appointed member of the Council is not, for the purposes of any Act, an office or place of profit under the Crown.

**10 SCHEDULE 2—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE
INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL**

(Sec. 7)

General procedure

- 15 1. (1) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Council.
- (2) The Minister shall call the first meeting of the Council in such manner as the Minister considers appropriate.

Quorum

- 20 2. The quorum for a meeting of the Council is 7 members, of whom 1 must be the Chairperson of the Council.

Presiding member

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

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Minutes

- 30 5. The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

**SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
VOCATIONAL TRAINING BOARD**

(Sec. 16)

35 Definitions

1. In this Schedule—

*Industrial and Commercial Training 1989***SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD—continued**

“appointed member” means a member of the Board referred to in section 16 (2) (c) or (d).

Nomination of appointed members

2. An appointed member—

- 5 (a) in the case of a member appointed to represent employers—
- (i) shall be nominated for appointment in the prescribed manner by such employers, or by such associations or industrial unions of employers, as may be prescribed; or
 - 10 (ii) if no such nomination is made within a reasonable time after the Minister requests such a nomination to be made, shall be appointed by the Minister without the necessity for nomination; and
- (b) in the case of a member appointed to represent employees—
- (i) shall be nominated in the prescribed manner by such industrial unions of employees as may be prescribed; or
 - 15 (ii) if no such nomination is made within a reasonable time after the Minister requests such a nomination to be made, shall be appointed by the Minister without the necessity for nomination.

Acting members

20 3. (1) The Minister may appoint a person to act in the position of an appointed member.

(2) An acting appointed member, while so acting, has all the functions of the member for whom the acting member is acting and shall be taken to be that member.

25 (3) A person, while acting in the position of an appointed member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine in respect of the person.

Term of office

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

30 Remuneration

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

Vacancy in office of appointed member

35 6. (1) An appointed member ceases to hold office—

- (a) if the member—
 - (i) dies; or
 - (ii) completes a term of office and is not re-appointed; or
 - (iii) resigns the office by instrument in writing addressed to the Minister; or
 - 40 (iv) is removed from office by the Minister; or

Industrial and Commercial Training 1989

**SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
VOCATIONAL TRAINING BOARD—*continued***

(b) if the person or body by whom the member was nominated for appointment withdraws the nomination in the prescribed manner.

(2) The Minister may remove an appointed member from office at any time.

Filling of vacancies

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

**SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE
VOCATIONAL TRAINING BOARD**

(Sec. 16)

10 Convening meetings

1. A meeting of the Board shall be convened by the Commissioner—

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

15 Rules for conduct of business

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

Quorum

3. The quorum for a meeting of the Board is 2 members, of whom 1 must be the
20 Commissioner.

Procedure and decisions of the Board

4. (1) The Chairperson of the Board shall preside at a meeting of the Board.

- (2) A member of the Board referred to in section 16 (2) (b) is not entitled to vote at any meeting of the Board, but is entitled to be heard on any matter that is before the
25 Board.

(3) The Chairperson of the Board has a deliberative vote at any meeting of the Board and, in the event of an equality of votes, has a second or casting vote.

Chairperson may act as Board when other members are absent etc.

5. (1) Where, with respect to a matter arising at a meeting of the Board, there are
30 no votes of the other members of the Board, the Chairperson of the Board may decide the matter, in which case the matter shall be taken to have been decided by the Board at the meeting.

(2) If—

- (a) the Chairperson of the Board is present at a duly convened meeting of the Board or at a time and place to which any such meeting has been adjourned; and
- (b) all of the other members of the Board are absent from the meeting or from the
35 place at that time,

Industrial and Commercial Training 1989

**SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE
VOCATIONAL TRAINING BOARD—*continued***

any matter that the Board is competent to deal with may be dealt with by the Chairperson, in which case the matter shall be taken to have been dealt with by the Board at a meeting.

Schedule not to apply to proceedings under Part 4

- 5 6. This Schedule does not apply to the procedure of the Board in the exercise of its functions under Part 4.

**SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
APPEAL PANEL**

(Sec. 85)

10 Definitions

1. In this Schedule—

“appointed member” means a member of the Appeal Panel referred to in section 85 (2) (b) or (c).

Term of office

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

Remuneration

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

Vacancy in office of member

4. (1) The office of an appointed member becomes vacant if the member—
- (a) dies; or
 - 25 (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Secretary; or
 - (d) is removed from office by the Minister; or
 - 30 (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - 35 (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time on the
- 40 grounds of incompetence, incapacity or misbehaviour.

Industrial and Commercial Training 1989

**SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
APPEAL PANEL—*continued***

Filling of vacancy in office of member

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

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

5

(Sec. 102)

Part 1—Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

10

This Act

Industrial Arbitration (Industrial and Commercial Training) Amendment Act 1989

Miscellaneous Acts (Industrial and Commercial Training) Amendment Act 1989.

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

15

(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

20

(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 the enactment of the Industrial and Commercial
Training Act 1989**

25 Definitions

2. (1) In this Part—

“the 1981 Act” means the Apprenticeship Act 1981;

“the 1985 Act” means the Commerce and Industry Training Council Act 1985.

(2) The provisions of a regulation referred to in clause 1 shall, to the extent to which they consist of provisions of a savings or transitional nature consequent on the enactment of the Industrial and Commercial Training Act 1989, be taken to be included within this Part.

Pending proceedings etc.

3. (1) Any proceedings that were pending before—

35

(a) an apprenticeship training committee; or

(b) the Industrial Commission; or

(c) an industrial magistrate,

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

before the commencement of this clause may be continued and completed, and any order may be made in those proceedings and shall (subject to this Part) be given effect to, as if this Act had not been enacted.

5 (2) The provisions of this Part apply to and in respect of any order made, or anything done, by—

- (a) an apprenticeship training committee; or
- (b) the Industrial Commission; or
- (c) an industrial magistrate,

10 in any such proceedings as if the order had been made, or the thing done, immediately before the commencement of this clause.

Pending appeals

4. (1) For the purposes of any appeal proceedings, the decision of an apprenticeship training committee under the 1981 Act shall be taken to be a decision of the Board.

15 (2) This clause does not apply to any appeal proceedings that were pending before the Industrial Commission before the commencement of this clause.

Abolition of Councils

5. (1) The New South Wales Apprenticeship Council and the Commerce and Industry Training Council of New South Wales are abolished.

(2) A reference in any Act or statutory instrument, or in any other document, to—

- 20 (a) the New South Wales Apprenticeship Council; or
- (b) the Commerce and Industry Training Council of New South Wales,

shall, on and from the commencement of this clause, be read as a reference to the Council constituted by section 7.

Apprenticeship training committees

25 6. (1) On the commencement of this clause—

- (a) each apprenticeship training committee established under the 1981 Act is dissolved; and
- (b) each member of any such committee shall become a member of the Board.

30 (2) A person who becomes a member of the Board pursuant to this clause shall, subject to this Act, hold office as such for 3 years from the commencement of this clause.

Apprenticeship supervisors

7. (1) A person who was an apprenticeship supervisor under the 1981 Act immediately before the commencement of this clause shall be taken to be a training officer under this Act.

35 (2) A reference in any Act or statutory instrument, or in any other document, to an apprenticeship supervisor shall, on and from the commencement of this clause, be read as a reference to a training officer.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Apprenticeships**

8. An apprenticeship in force immediately before the commencement of this clause under Division 2 or 3 of Part 4 of the 1981 Act shall be taken to be an indentured apprenticeship or trainee apprenticeship, as the case may be, established under this Act.

5 Certificates

9. A certificate issued under section 28 or 29 of the 1981 Act before the commencement of this clause, or issued under that section as a consequence of the operation of clause 3, shall be taken to be a craft certificate issued under section 43 of this Act.

10 Defence Force determinations

10. On and from the commencement of this clause—

- (a) a determination under section 35 of the 1981 Act shall be taken to be a determination under section 81 of this Act; and
- (b) an instrument filed under section 35 of the 1981 Act shall be taken to be an instrument filed under section 81 of this Act; and
- (c) a certificate issued under section 35 of the 1981 Act shall be taken to be a craft certificate issued under section 81 of this Act.

Regulations

11. On and from the commencement of this clause, all regulations under the 1981 Act and the 1985 Act are repealed.

Evidence

12. Evidence of any order, decision, ruling or determination made under the authority of the 1981 Act may, on and from the commencement of this clause, be given by the production of a copy thereof duly certified by the Commissioner.

25 Construction of references to repealed Acts

13. A reference in any Act or statutory instrument, or in any other document, to the 1981 Act or to the 1985 Act shall, on and from the date of assent to this Act, be read as including a reference to this Act.

The Director of Apprenticeship

14. A reference in any Act or statutory instrument, or in any other document, to the Director of Apprenticeship shall, on and from the commencement of this clause, be read as a reference to the Commissioner.
-

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1989

INDUSTRIAL AND COMMERCIAL TRAINING ACT 1989

No. 77

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Object of Act
4. Definitions
5. Relationship with Industrial Arbitration Act 1940
6. Act binds Crown

PART 2—ADMINISTRATION

Division 1—The Industrial and Commercial Training Council

7. Constitution of the Council
8. Objects and functions of the Council
9. Staff of the Council
10. Advisory functions of the Council
11. Advisory committees
12. Delegation by the Council

Division 2—The Commissioner for Vocational Training

13. Appointment of the Commissioner
14. Functions of the Commissioner
15. Delegation by the Commissioner

Division 3—The Vocational Training Board

16. Establishment of the Board
17. Functions of the Board
18. Sitzings of the Board

Division 4—Training officers

19. Appointment of training officers
20. Functions of training officers

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING

Division 1—Establishment of training schemes

21. Declared vocations
22. Vocational training orders
23. Vocational training guidelines

Division 2—Apprenticeships

24. Persons under 21 not to be employed in declared trades unless apprentices etc.
25. Applications for establishment of apprenticeships

Industrial and Commercial Training 1989

26. Compulsory applications for apprentices who are under 21
27. Determination of applications
28. Notice of determination
29. Commencement of apprenticeships
30. Commissioner may direct apprenticeship to have effect
31. Conditions of apprenticeship
32. Vocational training directions
33. Previous time as probationary apprentice to form part of term of apprenticeship
34. Remuneration of adult apprentices
35. Extent to which apprenticeships are binding
36. Duties under apprenticeships
37. Courses of studies
38. Assignment of indentured apprenticeships
39. Cancellation and suspension of apprenticeships by consent
40. Variation of apprenticeships
41. Death of employer etc.
42. Effect of change of composition in partnership etc.
43. Completion of apprenticeship
- Division 3—Traineeships
44. Applications for approval as a recognised trainee employer
45. Recognised trainee employers may enter traineeships
46. Applications for establishment of traineeships
47. Notice of determination
48. Commencement of traineeships
49. Conditions of traineeship
50. Vocational training directions
51. Previous time as trainee to form part of term of traineeship
52. Remuneration of adult trainees
53. Extent to which traineeships are binding
54. Duties under traineeships
55. Courses of studies
56. Assignment of traineeships
57. Cancellation of traineeships by consent
58. Variation of traineeships
59. Death of employer etc.
60. Effect of change of composition of partnership etc.
61. Completion of traineeship
- Division 4—General
62. Apprenticeships etc. presumed to benefit apprentices etc.
63. Premiums etc. for entering apprenticeships etc.
64. Probationary apprentices not to be employed otherwise than in accordance with relevant vocational training order

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

- Division 1—Complaints
65. Complaints to be made to the Commissioner
66. Commissioner to refer complaints to the Board
67. Suspension of apprenticeships etc. pending hearing
68. Board to fix time and place for hearing complaints
69. Parties
- Division 2—Hearings
70. Procedure generally
71. Legal representation
72. Attendance of witnesses etc.

Industrial and Commercial Training 1989

- 73. Witnesses to answer questions
- 74. Refusal to attend or to answer questions etc.
- 75. Witnesses' expenses
- 76. Adjournments
- 77. Misconduct
- 78. Costs

Division 3—Determinations

- 79. Conciliation
- 80. Determinations

PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

- 81. Recognition of Defence Force trade training
- 82. Recognition of other qualifications
- 83. Recognition of other trade training

PART 6—REVIEW AND APPEALS

Division 1—Review

- 84. Review by the Council

Division 2—Appeals

- 85. Constitution of the Appeal Panel
- 86. Appeals
- 87. Sittings of the Appeal Panel
- 88. Determination of appeals

PART 7—MISCELLANEOUS

- 89. Powers of entry to premises etc.
- 90. Search warrants
- 91. Obstruction etc. of training officers
- 92. False or misleading information
- 93. Disclosure of business information
- 94. Proceedings for offences
- 95. Applications and notices
- 96. Evidentiary certificates
- 97. Publication of certain matters
- 98. Liability
- 99. Reports
- 100. Regulations
- 101. Repeals
- 102. Savings, transitional and other provisions

SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

SCHEDULE 2—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD

SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE VOCATIONAL TRAINING BOARD

SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE APPEAL PANEL

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

INDUSTRIAL AND COMMERCIAL TRAINING ACT 1989 No. 77

NEW SOUTH WALES



Act No. 77, 1989

An Act to establish the Industrial and Commercial Training Council and the Vocational Training Board; to define the functions of those bodies; to provide for the regulation of apprenticeships and traineeships; and for other purposes. [Assented to 2 June 1989]

See also Industrial Arbitration (Industrial and Commercial Training) Amendment Act 1989; Miscellaneous Acts (Industrial and Commercial Training) Amendment Act 1989.

Industrial and Commercial Training 1989

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Industrial and Commercial Training Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed for the commencement of section 101 in its application to different Acts or to different provisions of the same Act.

Object of Act

3. The object of this Act is to promote training within industry and commerce.

Definitions

4. (1) In this Act—

“advisory committee” means an advisory committee established under section 11;

“Appeal Panel” means the Appeal Panel constituted by section 85;

“apprentice” means a probationary apprentice, an indentured apprentice or a trainee apprentice;

“apprenticeship” means an apprenticeship established under Division 2 of Part 3;

“Board” means the Vocational Training Board of New South Wales constituted by section 16;

“certificate of completion” means a certificate issued under section 61, and includes a certificate of proficiency issued under that section;

“certificate of identification” means a certificate of identification issued under section 89;

“Commissioner” means the Commissioner for Vocational Training referred to in section 13;

“conciliation committee” means a conciliation committee established under section 18 of the Industrial Arbitration Act 1940;

“Council” means the Industrial and Commercial Training Council of New South Wales constituted by section 7;

“craft certificate” means a craft certificate issued under section 43, 81, 82 or 83, and includes a certificate of proficiency issued under any of those sections;

Industrial and Commercial Training 1989

“declared calling” means a vocation that is the subject of an order in force under section 21 by which the vocation is designated to be a declared calling for the purposes of this Act;

“declared trade” means a vocation that is the subject of an order in force under section 21 by which the vocation is designated to be a declared trade for the purposes of this Act;

“Department” means the Department of Industrial Relations and Employment;

“employer”, in relation to an apprentice or trainee, means—

- (a) the person who is, pursuant to an apprenticeship or traineeship, the employer of the apprentice or trainee; or
- (b) the person who is, in the case of a probationary apprentice, the person by whom the apprentice is for the time being actually employed;

“indentured apprentice” means an employee who is a party to an indentured apprenticeship;

“probationary apprentice” means a person who is employed as an apprentice in a declared trade but in respect of whom—

- (a) an application for establishment of an apprenticeship has yet to be made; or
- (b) such an application has been made but has yet to be determined; or
- (c) such an application has been approved but an apprenticeship between the employer and the apprentice has yet to take effect;

“public servant” means an officer or temporary employee within the meaning of the Public Sector Management Act 1988;

“qualified tradesperson”, in relation to a trade, means—

- (a) a person who has a craft certificate in respect of that trade; or
- (b) a person who has qualifications and experience that, pursuant to a determination under section 81, 82 or 83, entitle the person to a craft certificate under any of those sections;

“recognised educational establishment” means—

- (a) a college of technical and further education, a college of advanced education or a university; or
- (b) an establishment that is approved for the time being by the Council or that belongs to a class of establishments so approved;

“recognised trainee employer” means an employer who is approved as a recognised trainee employer under section 44;

“required course of on-the-job training”, in relation to an apprentice or trainee who is employed in a declared trade or declared calling, means—

Industrial and Commercial Training 1989

(a) the course of on-the-job training that an apprentice or trainee is required by a vocational training order to undertake in connection with that trade or calling; or

(b) if a vocational training direction allows the apprentice or trainee to undertake an alternative course of on-the-job training—the alternative course of on-the-job training;

“required course of studies”, in relation to an apprentice or trainee who is employed in a declared trade or declared calling, means—

(a) the course of studies that an apprentice or trainee is required by a vocational training order to undertake in connection with that trade or calling; or

(b) if a vocational training direction allows the apprentice or trainee to undertake an alternative course of studies—the alternative course of studies;

“Secretary” means the Secretary of the Department;

“trainee” means an employee who is a party to a traineeship;

“trainee apprentice” means an employee who is a party to a trainee apprenticeship;

“traineeship” means a traineeship established under Division 3 of Part 3;

“training officer” means a training officer appointed under section 19;

“vocation” includes trade and calling;

“vocational training direction” means a direction in force under section 32 or 50;

“vocational training guideline” means a guideline in force under section 23;

“vocational training order” means an order in force under section 22.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Relationship with Industrial Arbitration Act 1940

5. 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 Arbitration Act 1940, or of any regulation, order, industrial award or industrial agreement made under that Act,

Industrial and Commercial Training 1989

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

Act binds Crown

6. 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.

PART 2—ADMINISTRATION

Division 1—The Industrial and Commercial Training Council

Constitution of the Council

7. (1) There is constituted by this Act a body corporate under the corporate name of the Industrial and Commercial Training Council of New South Wales.

(2) The Council shall consist of 13 members, of whom—

- (a) 1 shall be the Secretary; and
- (b) 1 shall be the Commissioner; and
- (c) 8 shall be appointed by the Minister from persons having knowledge and experience relating to industrial or commercial training; and
- (d) 2 shall be appointed by the Minister, on the nomination of the Minister for Education and Youth Affairs, of whom 1 shall be appointed to represent the Department of Technical and Further Education; and
- (e) 1 shall be appointed by the Minister on the nomination of the Commonwealth Minister for Employment, Education and Training.

(3) The Secretary shall be the Chairperson of the Council.

(4) The Council—

- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown; and
- (c) is, in the exercise of its functions, subject to the control and direction of the Minister.

(5) Schedule 1 has effect with respect to the members of the Council.

(6) Schedule 2 has effect with respect to the procedure of the Council.

Objects and functions of the Council

8. (1) The objects of the Council are—

Industrial and Commercial Training 1989

- (a) to investigate matters relating to industrial and commercial employment and to the need for industrial and commercial training; and
- (b) to advise the Minister on matters relating to existing and proposed courses of industrial and commercial training; and
- (c) to approve courses of industrial and commercial training to be undertaken by apprentices and trainees under this Act; and
- (d) to supervise the provision of industrial and commercial training conducted under this Act; and
- (e) to monitor the provision of industrial and commercial training conducted otherwise than under this Act.

(2) The Council has such functions as are necessary or convenient to enable it to achieve its objects.

Staff of the Council

9. (1) Such staff as may be necessary to enable the Council to exercise its functions shall be employed under the Public Sector Management Act 1988.

(2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(3) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (2), is an officer of the Council.

Advisory functions of the Council

10. (1) The Council may, and when requested by the Minister to do so shall, report to the Minister on—

- (a) changes in the nature of industry and commerce and the consequence of such changes on the need for industrial and commercial training and the way in which such training should be conducted; and
- (b) the need to promote a greater amount and a higher standard of training in and for industry and commerce; and
- (c) the desirability for and the economic feasibility of providing accreditation, certification and approval of different types of industrial and commercial training; and
- (d) the need for the provision of training personnel in industry and commerce; and
- (e) the manner of achieving increased consultation and co-operation on industrial and commercial training matters at places of work; and

Industrial and Commercial Training 1989

- (f) the methods for publicising the benefits to be derived from industrial and commercial training by individuals and by industry and commerce generally; and
- (g) the particular action which can be taken to create additional training and employment opportunities for school leavers and other young people, retrenched employees, women seeking to rejoin the workforce, disabled people, Aborigines, migrants (particularly those with English language problems) and other disadvantaged persons or identifiable groups of persons; and
- (h) the vocations to which this Act should be applied; and
- (i) other matters in relation to skill formation; and
- (j) the desirability of—
 - (i) amending this Act or the regulations; or
 - (ii) developing new administrative procedures or varying existing administrative procedures,so as to facilitate the provision of effective industrial and commercial training.

(2) In the exercise of its functions under this section, the Council shall have particular regard to the need for promoting, to the greatest extent practicable, the efficient and economic use of resources for industrial and commercial training.

(3) For the purpose of exercising its functions under this section, the Council may confer with any person or body, whether in New South Wales or elsewhere.

(4) A report made by the Council may contain such recommendations in relation to the matters dealt with in the report as the Council considers appropriate.

(5) One or more members of the Council may prepare a minority report in connection with any matter dealt with in a report made by the Council.

(6) A minority report shall form part of the report made by the Council.

Advisory committees

11. (1) The Council may establish advisory committees to assist it in the exercise of its functions.

(2) Any or all of the members of an advisory committee may be persons who are not members of the Council.

(3) Without limiting the generality of subsection (2), the membership of an advisory committee may comprise the members of the Board or of any other body, including any body in the nature of an industry training committee, whether established in New South Wales or elsewhere.

Industrial and Commercial Training 1989

(4) The procedure for the calling of meetings of an advisory committee, and for the conduct of business at those meetings, shall be as determined by the committee.

(5) The first meeting of an advisory committee shall be called in such manner as the Council may determine.

Delegation by the Council

12. The Council may delegate to any person or body, or to any person or body belonging to a specified class of persons or bodies, any of its functions, other than this power of delegation.

Division 2—The Commissioner for Vocational Training**Appointment of the Commissioner**

13. The Governor may, under and in accordance with the Public Sector Management Act 1988, appoint a Commissioner for Vocational Training.

Functions of the Commissioner

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

Delegation by the Commissioner

15. The Commissioner may delegate to any person, or to any person belonging to a specified class of persons, any of the Commissioner's functions (including his or her functions as member or Chairperson of the Board), other than this power of delegation.

Division 3—The Vocational Training Board**Establishment of the Board**

16. (1) There shall be a Vocational Training Board of New South Wales.

(2) The Board shall consist of at least 4 members, of whom—

(a) 1 shall be the Commissioner; and

(b) at least 1 shall be a person nominated for the time being by the Director-General of Technical and Further Education for the purposes of this paragraph; and

(c) at least 1 shall be a person appointed by the Minister to represent employers; and

(d) at least 1 shall be a person appointed by the Minister to represent employees.

(3) The Commissioner is the Chairperson of the Board.

(4) Schedule 3 has effect with respect to the members of the Board.

Industrial and Commercial Training 1989

(5) Schedule 4 has effect with respect to the procedure of the Board.

Functions of the Board

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

Sittings of the Board

18. (1) The Board shall, for the purpose of exercising its functions, be constituted by at least 4 of its members, of whom—

- (a) 1 shall be the Commissioner or a person to whom the Commissioner has delegated his or her functions as Chairperson of the Board; and
- (b) 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (b); and
- (c) at least 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (c); and
- (d) at least 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (d).

(2) The number of members appointed from among the persons referred to in section 16 (2) (c) shall be the same as the number of members appointed from among the persons referred to in section 16 (2) (d).

(3) More than 1 sitting of the Board may be held at any 1 time.

(4) At any sitting of the Board, the Commissioner, or a person to whom the Commissioner has delegated his or her functions as Chairperson of the Board, shall be taken to be the Chairperson of the Board.

Division 4—Training officers**Appointment of training officers**

19. (1) The Commissioner may appoint such persons (whether public servants or otherwise) as the Commissioner thinks fit to be training officers, either for particular declared trades or declared callings or for declared trades and declared callings generally.

(2) A training officer (other than a public servant) is entitled to such remuneration as the Commissioner may, with the approval of the Minister, determine in respect of the officer.

Functions of training officers

20. The functions of a training officer are—

- (a) to monitor the training provided by employers to apprentices and trainees; and
- (b) to report to the Commissioner on the adequacy of such training, ~~either~~ generally or in a particular case; and

Industrial and Commercial Training 1989

- (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 training being provided to them by employers; and
- (e) to exercise such other functions as are conferred or imposed on training officers by or under this Act,

in connection with each trade or calling in respect of which the officer is appointed.

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING

Division 1—Establishment of training schemes

Declared vocations

21. (1) The Minister may, by order published in the Gazette, designate any vocation to be a declared trade or declared calling for the purposes of this Act.

(2) The same vocation may be both a declared trade and a declared calling.

Vocational training orders

22. (1) The Council may from time to time make orders specifying, in relation to a particular declared trade or declared calling—

- (a) the appropriate term of apprenticeship or traineeship in that trade or calling; and
- (b) the appropriate courses of studies to be undertaken by apprentices or trainees in that trade or calling; and
- (c) the appropriate courses of on-the-job training to be provided to apprentices or trainees by employers in that trade or calling; and
- (d) such other matters relating to the training of apprentices or trainees in that trade or calling as the Council considers appropriate.

(2) Such an order applies to an apprenticeship or traineeship whether or not the apprenticeship or traineeship was established before the order took effect, but does not, unless it expressly so provides, affect—

- (a) any vocational training direction in force in respect of the apprenticeship or traineeship; or
- (b) any course of studies or course of on-the-job training that is being undertaken, or that has been completed, by apprentices or trainees in that trade or calling,

prior to the making of the order.

(3) An order made under this section takes effect when notice of its making is published in the Gazette.

Industrial and Commercial Training 1989

(4) Such a notice shall identify the order, shall contain brief particulars of the substance of the order and shall specify that a copy of the order may be obtained from the offices of the Department.

(5) Copies of each order made under this section shall be kept at the offices of the Department and shall be made available for public inspection free of charge, and for purchase, during ordinary office hours.

Vocational training guidelines

23. (1) The Council may from time to time issue guidelines, in relation to a particular declared trade or declared calling or in relation to declared trades or declared callings generally, as to how the functions under this Part in respect of any such trade or calling shall be exercised by the Board or by the Commissioner.

(2) Copies of each guideline issued under this section shall be kept at the offices of the Department and shall be made available for public inspection free of charge, and for purchase, during ordinary office hours.

Division 2—Apprenticeships**Persons under 21 not to be employed in declared trades unless apprentices etc.**

24. (1) An employer shall not employ a person who is under the age of 21 years in a declared trade unless the employed person is an apprentice or qualified tradesperson in that trade.

Maximum penalty: 10 penalty units.

(2) This section does not apply to—

- (a) the employment of a person in a declared trade that is also a declared calling; or
- (b) the employment of a person in a declared trade by a parent of the person; or
- (c) the employment of a person in a declared trade, or in any area of a declared trade, that is exempted by the regulations from the operation of this section.

(3) An employer shall not employ a person as a probationary apprentice in a declared trade for a period of, or for periods totalling, more than 3 months, otherwise than with the consent of the Commissioner.

Maximum penalty: 5 penalty units.

(4) The Commissioner may consent to the employment of a person as a probationary apprentice for a further period of, or for further periods totalling, not more than 3 months.

Applications for establishment of apprenticeships

25. (1) An employer who employs a person in a declared trade may apply to the Commissioner for the establishment of an apprenticeship for the person.

(2) An application for establishment of an apprenticeship shall specify whether the proposed apprenticeship is to be served under an indentured apprenticeship or under a trainee apprenticeship.

Compulsory applications for apprentices who are under 21

26. (1) An employer who employs a person (being a person who is under the age of 21 years) as a probationary apprentice in a declared trade shall, within 14 days after the person is first employed by the employer, apply to the Commissioner for the establishment of an apprenticeship in that trade for the person.

Maximum penalty: 5 penalty units.

(2) Nothing in this section prevents an application that is made later than 14 days after the person is first employed from being considered under this Division.

Determination of applications

27. (1) The Commissioner shall deal with an application for establishment of an apprenticeship—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(2) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(3) An application for establishment of an apprenticeship shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the prospective employer has the ability to provide proper training in the relevant trade.

Notice of determination

28. (1) As soon as practicable after an application for establishment of an apprenticeship has been determined, the Commissioner shall cause notice of the determination, together with a copy of any vocational training direction made in relation to the application, to be given to the applicant.

Industrial and Commercial Training 1989

(2) If the application specifies that the proposed apprenticeship is to be served under an indentured apprenticeship, the Commissioner shall, within 3 months after the application is approved, cause indentures (in such form as may be approved for the time being by the Commissioner) to be sent to the employer for execution by the employer and by the apprentice.

(3) If the application specifies that the proposed apprenticeship is to be served under a trainee apprenticeship, the Commissioner shall, as soon as practicable after the application is approved, cause a progress card to be sent to the employer for use in recording the progress of the apprentice.

(4) An employer to whom indentures are sent under this section shall return the indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer.

Maximum penalty: 10 penalty units.

Commencement of apprenticeships

29. (1) An indentured apprenticeship takes effect when indentures—

- (a) signed by the employer and by the apprentice; and
- (b) in the case of an apprentice who is under the age of 18 years—accompanied by the written consent of a parent or guardian of the apprentice to the establishment of the apprenticeship,

are lodged with the Commissioner.

(2) A trainee apprenticeship takes effect on such date as is specified in that regard on the progress card sent to the employer in respect of the apprenticeship.

Commissioner may direct apprenticeship to have effect

30. (1) If an employer—

- (a) fails to make an application for the establishment of an apprenticeship within 3 months after a probationary apprentice who is under the age of 21 years is first employed by the employer; or
- (b) fails to return indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer under section 28,

the Commissioner may, on the application of the apprentice, direct that an indentured apprenticeship be taken to have come into effect, as from the expiry of that period, between the employer and the apprentice.

(2) As soon as practicable after giving such a direction, the Commissioner shall cause indentures, endorsed by the Commissioner in such manner as the Commissioner may determine, to be sent to the employer and to the apprentice.

Conditions of apprenticeship

31. Except as otherwise provided by a vocational training direction, the conditions of an apprenticeship, including—

- (a) the term of the apprenticeship; and
 - (b) the course of studies to be undertaken by the apprentice; and
 - (c) the course of on-the-job training to be undertaken by the apprentice,
- shall be as specified by the relevant vocational training order.

Vocational training directions

32. (1) The Commissioner or the Board may, when determining an application for establishment of an apprenticeship, make a vocational training direction in relation to the proposed apprenticeship.

(2) A vocational training direction may—

- (a) reduce or extend the term of the apprenticeship; or
- (b) approve an alternative course of studies to be undertaken by the apprentice; or
- (c) approve an alternative course of on-the-job training to be undertaken by the apprentice.

(3) In making a vocational training direction, the Commissioner or the Board—

- (a) shall have regard to any relevant instruction or training that the apprentice has received—
 - (i) whether as an apprentice or otherwise; and
 - (ii) whether in the particular trade or in some other trade or calling; and
 - (iii) whether in New South Wales or elsewhere; and
- (b) may have regard to any other matter that the Commissioner or the Board considers relevant; and
- (c) shall comply with any relevant vocational training guidelines.

Previous time as probationary apprentice to form part of term of apprenticeship

33. The period of time during which a person is a probationary apprentice in a declared trade shall, if the person subsequently becomes an apprentice under an apprenticeship in that trade, be taken to form part of the term of the person's apprenticeship.

Remuneration of adult apprentices

34. (1) If—

- (a) an apprenticeship is established in a declared trade for a person who is of or above the age of 21 years; and

Industrial and Commercial Training 1989

- (b) there is no industrial award or industrial agreement in force under which a rate of remuneration is set for apprentices in that trade who are of or above the age of 21 years, but there is such an award or agreement in force under which a rate of remuneration is set for apprentices who are under that age,

pending appropriate award or agreement variation, the interim rate of remuneration for that person shall be the maximum rate of remuneration set by the award or agreement for apprentices in that trade who are under the age of 21 years, being apprentices who are at the same stage of apprenticeship in that trade.

(2) A rate of remuneration set by this section has effect as if it formed part of an industrial award 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 of the apprentice.

Extent to which apprenticeships are binding

35. (1) Duly executed indentures that have been returned to the Commissioner (including indentures endorsed by the Commissioner in accordance with section 30)—

- (a) have effect as if they were a deed duly executed by the employer and by the apprentice; and
- (b) bind the employer and the apprentice throughout the term of the apprenticeship.

(2) A trainee apprenticeship binds the employer and the apprentice for so long as the apprentice remains in the employ of the employer.

Duties under apprenticeships

36. (1) The employer of an apprentice shall—

- (a) take all reasonable steps to cause the apprentice to be instructed in the skills of the declared trade in which he or she is an apprentice; and
- (b) provide all necessary facilities to ensure that the apprentice receives appropriate practical training in that trade; and
- (c) take all reasonable steps to enable the apprentice to undertake and complete the required course of studies and the required course of on-the-job training for that trade; and
- (d) give the apprentice all reasonable opportunities to receive such other instruction or training as may be necessary to enable the apprentice to learn the skills of that trade; and
- (e) discharge his or her obligations as an employer of the apprentice.

Industrial and Commercial Training 1989

(2) An apprentice shall—

- (a) make all reasonable efforts to acquire the skills of the trade in which he or she is an apprentice; and
- (b) accept all instruction and training in that trade given to the apprentice by or on behalf of the employer; and
- (c) make all reasonable efforts to complete the required course of studies and the required course of on-the-job training for that trade; and
- (d) discharge his or her obligations as an employee of the employer.

Courses of studies

37. (1) An apprentice, in undertaking the required course of studies for the declared trade in which he or she is an apprentice, shall comply with the requirements of the recognised educational establishment by which the course is conducted.

(2) Time spent by an apprentice in undertaking any such course of studies shall be taken to form part of the time required by the apprenticeship to be spent in discharging his or her obligations under the apprenticeship.

Assignment of indentured apprenticeships

38. (1) An indentured apprenticeship may not be assigned from one employer to another otherwise than in accordance with this section.

(2) An application for approval to the assignment of an indentured apprenticeship may be made to the Commissioner by the prospective employer.

(3) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(5) An indentured apprenticeship shall not be assigned unless the Commissioner or the Board, as the case may be, is satisfied—

- (a) that the prospective employer has the ability to provide proper training in the relevant trade; and
- (b) that the apprentice consents to the assignment of the apprenticeship.

(6) If—

- (a) approval has been given to the assignment of an indentured apprenticeship; and

Industrial and Commercial Training 1989

(b) the Commissioner is satisfied that the apprentice's existing employer consents to the assignment,
the Commissioner shall effect the assignment by giving notice of the assignment to the existing employer, to the prospective employer and to the apprentice.

(7) If the Commissioner—

(a) sends a notice to an employer who is a party to an indentured apprenticeship—

(i) addressed to the last address of the employer known to the Commissioner; and

(ii) requesting the employer to notify the Commissioner whether or not the employer consents to the assignment of the apprenticeship to another employer; and

(b) does not receive any reply to that request within 21 days after the date on which the notice was sent,

the consent of the employer to whom the notice was sent shall be taken to have been given.

Cancellation and suspension of apprenticeships by consent

39. (1) An apprenticeship may be cancelled or suspended by consent of the employer and of the apprentice.

(2) If the Commissioner—

(a) sends a notice to the employer or to the apprentice—

(i) addressed to the last address of the person known to the Commissioner; and

(ii) requesting the person to notify the Commissioner whether or not the person consents to the cancellation or suspension of the apprenticeship; and

(b) does not receive any reply to that request within 21 days after the date on which the notice was sent,

the consent of the person to whom the notice was sent shall be taken to have been given.

(3) Within 14 days after the cancellation or suspension of an apprenticeship, the employer concerned shall give notice of the cancellation or suspension to the Commissioner.

Maximum penalty: 5 penalty units.

Variation of apprenticeships

40. (1) An apprenticeship may not be varied otherwise than in accordance with this section.

Industrial and Commercial Training 1989

(2) An application for variation of an apprenticeship may be made to the Commissioner by the employer or by the apprentice.

(3) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(5) An apprenticeship shall not be varied in a manner that contravenes any relevant vocational training guideline.

Death of employer etc.

41. (1) If—

- (a) the employer of an apprentice dies; and
- (b) the business in which the apprentice 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 shall be taken not to have been determined by the death of the employer.

(2) Unless cancellation of the apprenticeship is approved by the Board on the application of those executors or administrators, or of the apprentice, the apprenticeship continues to bind those executors or administrators as if they were the employers of the apprentice.

Effect of change of composition in partnership etc.

42. (1) If—

- (a) the employers of an apprentice are partners in a partnership; and
- (b) the business in which the apprentice is employed is carried on by the partners for the time being after a change in the composition of the partnership,

the apprenticeship shall be taken not to have been determined by that change.

(2) Unless cancellation of the apprenticeship is approved by the Board on the application of those partners, or of the apprentice, the apprenticeship continues to bind those partners as if they were the employers of the apprentice.

Completion of apprenticeship

43. (1) As soon as practicable after an apprentice completes his or her term of apprenticeship in a declared trade, the Commissioner shall, if satisfied that the apprentice is adequately trained to pursue that trade, cause a craft certificate in that trade to be given to the apprentice.

(2) An apprentice who has completed his or her term of apprenticeship in a declared trade, and who has successfully completed the required course of studies for that trade, is entitled to be issued instead with a certificate of proficiency in that trade.

Division 3—Traineeships**Applications for approval as a recognised trainee employer**

44. (1) An employer in a declared calling may apply to the Commissioner for approval of the employer as a recognised trainee employer in that calling.

(2) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(3) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(4) An application for approval of an employer as a recognised trainee employer shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the employer has the ability to provide proper training in the relevant calling.

Recognised trainee employers may enter traineeships

45. (1) A recognised trainee employer who is engaged in a declared calling may enter into a traineeship in that calling with any of the employer's employees.

(2) The indentures by which a recognised trainee employer and an employee enter into such a traineeship shall be in such form as may be approved for the time being by the Commissioner.

Applications for establishment of traineeships

46. (1) An employer (whether or not a recognised trainee employer) who employs a person in a declared calling may apply to the Commissioner for the establishment of a traineeship for the person.

Industrial and Commercial Training 1989

(2) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(3) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(4) An application for establishment of a traineeship shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the prospective employer has the ability to provide proper training in the relevant calling.

Notice of determination

47. (1) As soon as practicable after an application for establishment of a traineeship has been determined, the Commissioner shall cause notice of the determination, together with a copy of any vocational training direction made in relation to the application, to be given to the applicant.

(2) The Commissioner shall, within 3 months after the application is approved, cause indentures (in such form as may be approved for the time being by the Commissioner) to be sent to the employer for execution by the employer and by the trainee.

(3) An employer to whom indentures are sent under this section shall return the indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer.

Maximum penalty: 10 penalty units.

Commencement of traineeships

48. A traineeship takes effect when indentures—

- (a) signed by the employer and by the trainee; and
- (b) in the case of a trainee who is under the age of 18 years—
accompanied by the written consent of a parent or guardian of the trainee to the establishment of the traineeship,

are lodged with the Commissioner.

Conditions of traineeship

49. Except as otherwise provided by a vocational training direction, the conditions of a traineeship, including—

- (a) the term of the traineeship; and
- (b) the course of studies to be undertaken by the trainee; and

Industrial and Commercial Training 1989

(c) the course of on-the-job training to be undertaken by the trainee, shall be as specified by the relevant vocational training order.

Vocational training directions

50. (1) The Commissioner or the Board may, when determining an application for establishment of a traineeship, make a vocational training direction in relation to the proposed traineeship.

(2) A vocational training direction may—

- (a) reduce or extend the term of the traineeship; or
- (b) approve an alternative course of studies to be undertaken by the trainee; or
- (c) approve an alternative course of on-the-job training to be undertaken by the trainee.

(3) In making a vocational training direction, the Commissioner or the Board—

- (a) shall have regard to any relevant instruction or training that the trainee has received—
 - (i) whether as a trainee or otherwise; and
 - (ii) whether in the particular calling or in some other trade or calling; and
 - (iii) whether in New South Wales or elsewhere; and
- (b) shall comply with any relevant vocational training guidelines.

Previous time as trainee to form part of term of traineeship

51. The period of time during which a person is employed in a declared calling pending the establishment of traineeship in that calling shall, if the person subsequently becomes a trainee under a traineeship in that calling, be taken to form part of the term of the person's traineeship.

Remuneration of adult trainees

52. (1) If—

- (a) a traineeship is established in a declared calling for a person who is of or above the age of 21 years; and
- (b) there is no industrial award or industrial agreement in force under which a rate of remuneration is set for trainees in that calling who are of or above the age of 21 years, but there is such an award or agreement in force under which a rate of remuneration is set for trainees who are under that age,

pending appropriate award or agreement variation, the interim rate of remuneration for that person shall be the maximum rate of remuneration set by the award or agreement for trainees in that calling who are under the age of 21 years.

Industrial and Commercial Training 1989

(2) A rate of remuneration set by this section has effect as if it formed part of an industrial award 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 a traineeship between an employer and a trainee if the employer is a parent of the trainee.

Extent to which traineeships are binding

53. Duly executed indentures that have been returned to the Commissioner—

- (a) have effect as if they were a deed duly executed by the employer and by the trainee; and
- (b) bind the employer and the trainee throughout the term of the traineeship.

Duties under traineeships

54. (1) The employer of a trainee shall—

- (a) take all reasonable steps to cause the trainee to be instructed in the skills of the declared calling in which he or she is a trainee; and
- (b) provide all necessary facilities to ensure that the trainee receives appropriate practical training in that calling; and
- (c) take all reasonable steps to enable the trainee to undertake and complete the required course of studies and the required course of on-the-job training for that calling; and
- (d) give the trainee all reasonable opportunities to receive such other instruction or training as may be necessary to enable the trainee to learn the skills of that calling; and
- (e) discharge his or her obligations as an employer of the trainee.

(2) A trainee shall—

- (a) make all reasonable efforts to acquire the skills of the calling in which he or she is a trainee; and
- (b) accept all instruction and training in that calling given to the trainee by or on behalf of the employer; and
- (c) make all reasonable efforts to complete the required course of studies and the required course of on-the-job training for that calling; and
- (d) discharge his or her obligations as an employee of the employer.

Courses of studies

55. (1) A trainee, in undertaking the required course of studies for the declared calling in which he or she is a trainee, shall comply with the requirements of the recognised educational establishment by which the course is conducted.

Industrial and Commercial Training 1989

(2) Time spent by a trainee in undertaking any such course of studies shall be taken to form part of the time required by the traineeship to be spent in discharging his or her obligations under the traineeship.

Assignment of traineeships

56. (1) A traineeship may not be assigned from one employer to another otherwise than in accordance with this section.

(2) An application for approval to the assignment of a traineeship may be made to the Commissioner by the prospective employer.

(3) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(5) A traineeship shall not be assigned unless the Commissioner or the Board, as the case may be, is satisfied—

- (a) that the prospective employer has the ability to provide proper training in the relevant calling; and
- (b) that the trainee consents to the assignment of the traineeship.

(6) If—

- (a) approval has been given to the assignment of a traineeship; and
- (b) the Commissioner is satisfied that the trainee's existing employer consents to the assignment,

the Commissioner shall effect the assignment by giving notice of the assignment to the existing employer, to the prospective employer and to the trainee.

(7) If the Commissioner—

- (a) sends a notice to an employer who is a party to a traineeship—
 - (i) addressed to the last address of the employer known to the Commissioner; and
 - (ii) requesting the employer to notify the Commissioner whether or not the employer consents to the assignment of the traineeship to another employer; and
- (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,

Industrial and Commercial Training 1989

the consent of the employer to whom the notice was sent shall be taken to have been given.

Cancellation of traineeships by consent

57. (1) A traineeship may be cancelled by consent of the employer and of the trainee.

(2) If the Commissioner—

(a) sends a notice to the employer or to the trainee—

(i) addressed to the last address of the person known to the Commissioner; and

(ii) requesting the person to notify the Commissioner whether or not the person consents to the cancellation of the traineeship; and

(b) does not receive any reply to that request within 21 days after the date on which the notice was sent,

the consent of the person to whom the notice was sent shall be taken to have been given.

(3) Within 14 days after the cancellation of a traineeship, the employer concerned shall give notice of the cancellation to the Commissioner.

Maximum penalty: 5 penalty unit.

Variation of traineeships

58. (1) A traineeship may not be varied otherwise than in accordance with this section.

(2) An application for variation of a traineeship may be made to the Commissioner by the employer or by the trainee.

(3) The Commissioner shall deal with the application—

(a) by approving the application; or

(b) by dismissing the application; or

(c) by referring the application to the Board.

(4) The Board shall deal with an application referred to it under this section—

(a) by approving the application; or

(b) by dismissing the application.

(5) A traineeship shall not be varied in a manner that contravenes any relevant vocational training guideline.

Death of employer etc.

59. (1) If—

Industrial and Commercial Training 1989

- (a) the employer of a trainee dies; and
- (b) the business in which the 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 traineeship shall be taken not to have been determined by the death of the employer.

(2) Unless cancellation of the traineeship is approved by the Board on the application of those executors or administrators, or of the trainee, the traineeship continues to bind those executors or administrators as if they were the employers of the trainee.

Effect of change of composition of partnership etc.

60. (1) If—

- (a) the employers of a trainee are partners in a partnership; and
- (b) the business in which the trainee is employed is carried on by the partners for the time being after a change in the composition of the partnership,

the traineeship shall be taken not to have been determined by that change.

(2) Unless cancellation of the traineeship is approved by the Board on the application of those partners, or of the trainee, the traineeship continues to bind those partners as if they were the employers of the trainee.

Completion of traineeship

61. (1) As soon as practicable after a trainee completes his or her term of traineeship in a declared calling, the Commissioner shall, if satisfied that the trainee is adequately trained in that calling, cause a certificate of completion in that calling to be given to the trainee.

(2) A trainee who has completed his or her term of traineeship in a declared calling, and who has successfully completed the required course of studies for that calling, is entitled to be issued instead with a certificate of proficiency in that calling.

Division 4—General

Apprenticeships etc. presumed to benefit apprentices etc.

62. In the application of the Minors (Property and Contracts) Act 1970 to—

- (a) an apprenticeship into which a minor has entered as an apprentice;
or
 - (b) a traineeship into which a minor has entered as a trainee,
- the participation by the minor in the apprenticeship or traineeship shall, in the absence of evidence to the contrary, be taken to be for the benefit of the minor.

*Industrial and Commercial Training 1989***Premiums etc. for entering apprenticeships etc.**

63. A person shall not—

(a) directly or indirectly—

(i) require or permit any other person to pay or to give; or

(ii) demand or receive from any other person,

any fee or reward; or

(b) require any other person to enter into any bond or guarantee,

for or with respect to that other person's entering into an apprenticeship or traineeship with the first person, or with any other person, without having first obtained the consent of the Board.

Maximum penalty: 10 penalty units.

Probationary apprentices not to be employed otherwise than in accordance with relevant vocational training order

64. An employer shall not employ a probationary apprentice in a declared trade otherwise than in accordance with the relevant vocational training order.

Maximum penalty: 10 penalty units.

PART 4—PROCEEDINGS BEFORE THE VOCATIONAL TRAINING BOARD WITH RESPECT TO DISPUTES AND DISCIPLINARY MATTERS**Division 1—Complaints****Complaints to be made to the Commissioner**

65. (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 a training officer for the relevant trade or calling (other than a training officer who is not a public servant).

(2) A complaint that a party to an apprenticeship or traineeship has refused to consent to—

(a) the assignment of an indentured apprenticeship or traineeship; or

(b) the suspension or cancellation of an apprenticeship or traineeship, may be made by the other party to the apprenticeship or traineeship.

(3) A complaint shall be lodged at, or sent by post to, the offices of the Commissioner.

Commissioner to refer complaints to the Board

66. (1) The Commissioner shall refer all complaints to the Board for determination by the Board.

(2) The Commissioner shall not refer to the Board a complaint made by a party to an apprenticeship or traineeship unless the Commissioner has attempted to bring each of the parties to the apprenticeship or traineeship to a settlement acceptable to all of them.

Suspension of apprenticeships etc. pending hearing

67. (1) If the Commissioner is satisfied that the gravity of a complaint justifies such action, the Commissioner may suspend the relevant apprenticeship or traineeship pending the hearing of the complaint.

(2) The suspension of an apprenticeship or traineeship under this section has effect until the complaint is withdrawn or determined.

(3) The suspension of an apprenticeship or traineeship under this section does not, of itself, affect the relationship between the employer and the apprentice or trainee otherwise than in relation to instruction and training.

Board to fix time and place for hearing complaints

68. The Board shall fix a time and place for the hearing of a complaint and shall cause notice of the time and place so fixed to be given to the complainant and to each of the parties to the relevant apprenticeship or traineeship.

Parties

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

Division 2—Hearings**Procedure generally**

70. (1) The Board is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it thinks fit.

(2) A hearing shall be conducted with as little formality and legal technicality as the circumstances of the case permit.

(3) A hearing shall be conducted in the absence of the public.

Legal representation

71. (1) A party to a hearing is not entitled to be represented by a barrister or solicitor except with the consent of the Board 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 union of employers or employees; and
- (b) does not prevent the Crown, or a party that is a corporation or an industrial union of employers or employees, from appearing by a barrister or solicitor.

(3) At any hearing at which the Crown, or a party that is a corporation or an industrial union of employers or employees, appears by a barrister or solicitor, each of the other parties to the hearing is entitled to be represented at the hearing by a barrister or solicitor.

Attendance of witnesses etc.

72. (1) The Board—

- (a) may require a person—
 - (i) to attend a hearing for the purpose of giving evidence; or
 - (ii) to produce to the Board 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 Board may retain possession of a document produced to it pursuant to this section for such period as it considers necessary for the purpose of completing the hearing.

Witnesses to answer questions

73. (1) The Board 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.

Refusal to attend or to answer questions etc.

74. (1) A person—

- (a) shall not fail to comply with a requirement to attend a hearing, or to produce a document or to answer a question, to the extent to which the person is lawfully able to comply with the requirement; and

Industrial and Commercial Training 1989

- (b) shall not, in purported compliance with a requirement to answer a question, make a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

- (2) Subsection (1) (b) does not apply to statements made on oath.

Witnesses' expenses

75. A person (other than a public servant) who is required to attend or to give evidence at a hearing is entitled to be paid such allowances and expenses as may be prescribed.

Adjournments

76. The Board may from time to time adjourn a hearing to such time, date and place, and for such reasons, as it considers fit.

Misconduct

77. A person shall not misconduct himself or herself at a hearing.

Maximum penalty: 5 penalty units.

Costs

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

Division 3—Determinations**Conciliation**

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

Determinations

80. (1) The Board shall determine a complaint made under section 65 (1)—

- (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 Board considers appropriate; or
- (c) by varying, suspending or cancelling the apprenticeship or traineeship to which the complaint relates; or
- (d) by dismissing the complaint.

Industrial and Commercial Training 1989

(2) A complaint shall not be determined as referred to in subsection (1) (a), (b) or (c) unless the Board is satisfied that the person against whom the complaint has been made has failed to discharge his or her obligations under the apprenticeship or traineeship to which the complaint relates.

(3) The Board shall not cancel or suspend an apprenticeship or traineeship under subsection (1) unless it is satisfied that—

- (a) one of the parties is unlikely to discharge his or her obligations under the apprenticeship or traineeship; and
- (b) if that party is the employer—
 - (i) the other party is unwilling to allow another employer to assume those obligations; or
 - (ii) no other employer can be found who is willing to assume those obligations.

(4) The Board shall determine a complaint made under section 65 (2)—

- (a) by directing that the requirement for consent referred to in that subsection be waived; or
- (b) by dismissing the complaint.

(5) The Commissioner shall cause notice of the Board's determination to be given 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 shall be taken to be varied, suspended or cancelled, as the case may be, in accordance with the determination.

(7) If—

- (a) the Board 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, pursuant to 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 Board shall direct the employer to pay to the apprentice or trainee, and to contribute to any such scheme, an amount equivalent to the value of any right or benefit that the employer has failed to give and the amount of any payment that the employer has failed to contribute.

(8) Such a direction—

- (a) shall specify each amount to be paid under the direction; and
- (b) shall, on the filing of the prescribed documents in the office or registry of a court having jurisdiction to order payment of an amount so specified, be taken to be a judgment of that court for that amount.

(9) The prescribed documents are—

- (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.

PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

Recognition of Defence Force trade training

81. (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 pursuant to 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 Board 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 declared trade will be accorded recognition in that trade.

(3) The Board may determine that the course of training provided for a class of service apprenticeship or service adult trade training in a declared trade 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 Board may determine,

is adequately trained to pursue that trade.

(4) A determination under this section—

- (a) shall be set out in an instrument signed by the Commissioner; and
- (b) shall be filed by the Commissioner,

and a copy of the instrument shall be sent by the Commissioner to the relevant Defence Force authority.

Industrial and Commercial Training 1989

(5) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to a person who satisfies the Commissioner that the person—

- (a) has satisfactorily completed the course of training to which such a determination relates; and
- (b) has complied with any other conditions prescribed by the determination.

Recognition of other qualifications

82. (1) The Board may, on the application of any person or on its own motion, determine that a person—

- (a) who has specified qualifications in a declared trade (being qualifications obtained elsewhere than in New South Wales); and
- (b) who complies with such further conditions as to experience or otherwise as the Board may determine,

is adequately trained to pursue that trade.

(2) A determination under this section—

- (a) shall be set out in an instrument signed by the Commissioner; and
- (b) shall be filed by the Commissioner.

(3) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to a person who satisfies the Commissioner that the person—

- (a) has the qualifications to which such a determination relates; and
- (b) has complied with any other conditions prescribed by the determination.

Recognition of other trade training

83. (1) A person may apply to the Commissioner for recognition of the person's qualifications or experience in a particular declared trade.

(2) The Commissioner shall refer the application to the Board.

(3) If the Board is satisfied that the applicant has acquired the skills of the declared trade, it may determine that the applicant is adequately trained to pursue that trade.

(4) In making such a determination, the Board shall have regard to—

- (a) the length of time for which the applicant has been working in the declared trade; and
- (b) the nature and duration of any instruction or training received by the applicant in the declared trade; and
- (c) the nature of any qualifications held by the applicant in relation to the declared trade; and

Industrial and Commercial Training 1989

- (d) such other matters (including the applicant's performance in any examination or test set by the Board) as it considers relevant.
- (5) A determination under this section—
 - (a) shall be set out in an instrument signed by the Commissioner; and
 - (b) shall be filed by the Commissioner.
- (6) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to the person to whom the determination relates.

PART 6—REVIEW AND APPEALS**Division 1—Review****Review by the Council**

84. (1) The Board may, and when requested by the Council shall, refer to the Council any matter that is before the Board for determination under Part 3 or 5.

(2) The Council may determine any matter referred to it under this section or may refer the matter back to the Board for determination by the Board.

(3) The provisions of Parts 3 and 5 apply to matter that is referred to the Council under this section in the same way as they apply to matter before the Board.

(4) The Council may not delegate its functions under this section.

Division 2—Appeals**Constitution of the Appeal Panel**

85. (1) There shall be an Appeal Panel.

(2) The Appeal Panel shall consist of at least 3 persons, of whom—

- (a) at least 1 shall be an officer of the Department appointed by the Secretary; and
- (b) at least 1 shall be a person appointed by the Minister to represent employers; and
- (c) at least 1 shall be a person appointed by the Minister to represent employees.

(3) Schedule 5 has effect with respect to the members of the Appeal Panel.

Appeals

86. An appeal to the Appeal Panel may be made, in accordance with the regulations—

Industrial and Commercial Training 1989

- (a) from any decision by the Board or by the Commissioner dismissing an application for establishment of an apprenticeship or traineeship; or
- (b) from any vocational training direction made by the Board or by the Commissioner; or
- (c) from any decision by the Board or by the Commissioner dismissing an application for approval to the assignment of an indentured apprenticeship or traineeship; or
- (d) from any decision by the Board or by the Commissioner dismissing an application for variation of an apprenticeship or traineeship; or
- (e) from any decision by the Board or by the Commissioner pursuant to which an apprenticeship or traineeship has been varied; or
- (f) from any refusal by the Commissioner to issue a craft certificate or certificate of completion under Part 3 or 5; or
- (g) from any decision by the Board or by the Commissioner dismissing an application for approval as a recognised trainee employer; or
- (h) from any decision by the Commissioner refusing to refer a complaint under Part 4 for determination by the Board; or
- (i) from any determination by the Board in respect of a complaint under Part 4; or
- (j) from any determination by the Board under section 83 that denies recognition of a person's qualifications or experience in a particular declared trade; or
- (k) from any decision by the Council in the exercise of its functions under section 84.

Sittings of the Appeal Panel

87. (1) The Appeal Panel shall, for the purposes of hearing and determining an appeal, be constituted by 3 of its members, of whom—

- (a) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (a); and
- (b) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (b); and
- (c) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (c).

(2) The person referred to in subsection (1) (a) shall be the presiding member of the Appeal Panel for the purposes of the appeal in respect of which the Appeal Panel is constituted.

(3) When constituted for the purposes of hearing and determining an appeal from a decision or determination by the Board, the Appeal Panel shall not be constituted so as to include a member of the Appeal Panel who is also a member of the Board.

- (4) More than 1 sitting of the Appeal Panel may be held at any 1 time.

Determination of appeals

88. (1) An appeal shall be dealt with by way of a new hearing, and fresh evidence or fresh information may be given on the appeal.

(2) The provisions of Division 2 of Part 4 apply to proceedings before the Appeal Panel in the same way as they apply to proceedings before the Board under that Part.

(3) The provisions of Division 3 of Part 4 apply to proceedings before the Appeal Panel on an appeal from a determination by the Board under Part 4 in the same way as they apply to proceedings before the Board under that Part.

(4) The decision of the Appeal Panel shall be given effect to as if it were the decision of the person or body in respect of whose decision, determination, action or failure to act the appeal has been made.

(5) An appeal may be made to the Industrial Commission from a decision of the Appeal Panel by leave of the Industrial Commission.

(6) An appeal under subsection (5) shall be heard and determined by the Industrial Commission as if it were an application under the Industrial Arbitration Act 1940 for determination of an industrial matter.

(7) The decision of the Industrial Commission is final and shall be given effect to as if it were the decision of the person or body in respect of whose decision, determination, action or failure to act the appeal has been made.

PART 7—MISCELLANEOUS**Powers of entry to premises etc.**

89. (1) A training officer may exercise any one or more of the following powers:

- (a) such an officer may enter any premises or place in or on which a declared trade or declared calling is conducted;
- (b) such an officer may examine—
 - (i) any plant, equipment, material or substance used in relation to any such trade or calling; and
 - (ii) any document relating to any such trade or calling, found in or on the premises or place;
- (c) such an officer may take copies of, or extracts or notes from, any document relating to any such trade or calling found in or on the premises or place;
- (d) such an officer may require any person found in or on the premises or place to produce—

Industrial and Commercial Training 1989

(i) any plant, equipment, material or substance used in relation to any such trade or calling; or

(ii) any document relating to any such trade or calling,
that is in the possession or under the control of that person.

(2) A person shall not fail to comply with a requirement made by a training officer under subsection (1) (d).

Maximum penalty: 10 penalty units.

(3) A 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, a training officer—

(a) shall, 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) shall, as far as practicable, avoid doing anything which is likely to impede the lawful conduct of any trade or calling being carried out in or on the premises or place.

(6) A training officer shall, for the purposes of this section, be issued with a certificate of identification that is in or to the effect of the prescribed form.

(7) A training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

Search warrants

90. (1) A training officer may apply to an authorised justice 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 justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a 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) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

Industrial and Commercial Training 1989

- (a) may accompany a training officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

(5) In this section—

“authorised justice” means a Magistrate or a justice of the peace employed in the Attorney General's Department.

(6) A training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

Obstruction etc. of training officers

91. A person shall not assault, delay, obstruct, hinder or impede a training officer in the exercise of the officer's functions under this Act.

Maximum penalty: 10 penalty units.

False or misleading information

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

Maximum penalty: 20 penalty units.

Disclosure of business information

93. (1) A person shall not disclose any business information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

(2) In this section—

“business information” means—

- (a) trade secrets; or
- (b) information (other than trade secrets) that is of commercial value; or

Industrial and Commercial Training 1989

- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

Proceedings for offences

94. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before an industrial magistrate or before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against this Act or the regulations shall not 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.

Applications and notices

95. (1) An application that, pursuant to this Act or the regulations, may be made to the Commissioner or to the Board—

- (a) shall be in such form as may be approved for the time being by the Commissioner; and
- (b) shall be lodged at, or sent by post to, the offices of the Commissioner.

(2) A notice that the Commissioner is required or permitted to cause to be given 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.

Evidentiary certificates

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

is admissible in any proceedings and is evidence of the fact or facts so certified.

Publication of certain matters

97. (1) It is sufficient compliance with a requirement of this Act that matter be published in the Gazette if the matter is instead published in the Industrial Gazette.

Industrial and Commercial Training 1989

(2) Evidence of any such matter may be given by the production of a copy of the Gazette, or of the Industrial Gazette, in which the matter has been published.

Liability

98. No matter or thing done by—

- (a) the Council or any member of the Council; or
- (b) the Commissioner; or
- (c) the Board or any member of the Board; or
- (d) a training officer; or
- (e) any person acting under the direction of the Council, the Board or the Commissioner,

shall, if the matter or thing was done in good faith for the purposes of executing this Act, subject any member of the Council, the Commissioner, any member of the Board, any training officer or any person so acting, personally, to any action, liability, claim or demand.

Reports

99. (1) As soon as practicable after 30 June, but no later than 31 December, in each year, the Chairperson of the Council shall prepare and forward to the Minister a report on the work and activities of the Council for the period of 12 months ending on 30 June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving it.

(3) Without limiting the generality of subsection (1), the Chairperson of the Council shall submit to the Minister, at such times and in respect of such periods as the Minister directs, reports on the work and activities of the Council.

(4) A report shall deal with such matters as the Minister directs and with such other matters as the Chairperson of the Council considers appropriate to include in the report.

Regulations

100. (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 terms and conditions of apprenticeships and traineeships; and
- (c) the registration of employers in connection with apprenticeships and traineeships; and

Industrial and Commercial Training 1989

- (d) the proportion of apprentices to skilled tradesmen who may be employed by employers in specified trades; and
- (e) the instruction and practical training to be provided for and undertaken by apprentices and trainees; and
- (f) the supervision of apprentices and trainees by their employers; and
- (g) the facilities to be provided for apprentices and trainees for the purpose of their being trained by their employers; and
- (h) the temporary transfer of apprentices and trainees to the service of alternative employers; and
- (i) the issue, renewal, transfer and cancellation of progress cards in relation to apprentices, the completion of such cards and their return to the Commissioner; and
- (j) the recognition of group training schemes; and
- (k) the keeping of records; and
- (l) the forms to be used for the purposes of this Act; and
- (m) any other matter relating to the instruction or practical training of apprentices and trainees by their employers.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Repeals

101. The Apprenticeship Act 1981 and the Commerce and Industry Training Council Act 1985 are repealed.

Savings, transitional and other provisions

102. Schedule 6 has effect.

SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

(Sec. 7)

Definitions

1. In this Schedule—

“appointed member” means a member of the Council referred to in section 7 (2) (c), (d) or (e).

Acting members

2. (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member and the person, while so acting, has all the functions of the member and shall be taken to be the member.

(2) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

*Industrial and Commercial Training 1989***SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

(3) A person, while acting in the office of an appointed member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of an appointed member shall be regarded as an absence from office of the member.

Chairperson may appoint alternate

3. (1) The Chairperson of the Council may, by instrument in writing, appoint a person to act as his or her alternate.

(2) An alternate appointed under this clause, while so appointed, has all the functions of the Chairperson of the Council and shall be taken to be the Chairperson.

(3) The appointment of an alternate under this clause does not prevent the Chairperson of the Council from exercising the functions of Chairperson.

Term of office

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

Remuneration

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

Vacancy in office of member

6. (1) The office of an appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister; or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

*Industrial and Commercial Training 1989***SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

(2) The Minister may remove an appointed member from office at any time.

(3) Without affecting the generality of subclause (2), the Minister may remove from office an appointed member who contravenes clause 8.

Filling of vacancy in office of member

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

Disclosure of pecuniary interests

8. (1) An appointed member who has a direct or indirect pecuniary interest—

(a) in a matter being considered or about to be considered at a meeting of the Council; or

(b) in a thing being done or about to be done by the Council,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by an appointed member at a meeting of the Council that the member—

(a) is a member, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body, or to that person, which may arise after the date of the disclosure.

(3) The Council shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Council from time to time.

(4) After an appointed member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—

(a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or

(b) exercise any function under this Act with respect to that thing.

(5) A contravention of this clause does not invalidate any decision of the Council or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of an appointed member in a matter or thing that arises merely because—

(a) the member employs apprentices or trainees; or

(b) the member—

(i) is a member, or is in the employment, of a company or other body; or

(ii) is a partner, or is in the employment, of a person,

by which or by whom apprentices or trainees are employed.

*Industrial and Commercial Training 1989***SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

(7) A reference in this clause to a meeting of the Council includes a reference to a meeting of a committee of the Council.

Effect of certain other Acts

9. (1) The Public Sector Management Act 1988 does not apply to an appointed member and such a member is not, as an appointed member, subject to that Act, Part 8 excepted.

(2) If, by or under any other Act, provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of the Council or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member of the Council is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 2—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

(Sec. 7)

General procedure

1. (1) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Council.

(2) The Minister shall call the first meeting of the Council in such manner as the Minister considers appropriate.

Quorum

2. The quorum for a meeting of the Council is 7 members, of whom 1 must be the Chairperson of the Council.

Presiding member

3. (1) The Chairperson of the Council shall preside at a meeting of the Council.

(2) The Chairperson of the Council has a deliberative vote at any meeting of the Council and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Minutes

5. The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

*Industrial and Commercial Training 1989***SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD**

(Sec. 16)

Definitions

1. In this Schedule—

“appointed member” means a member of the Board referred to in section 16 (2) (c) or (d).

Nomination of appointed members

2. An appointed member—

- (a) in the case of a member appointed to represent employers—

- (i) shall be nominated for appointment in the prescribed manner by such employers, or by such associations or industrial unions of employers, as may be prescribed; or

- (ii) if no such nomination is made within a reasonable time after the Minister requests such a nomination to be made, shall be appointed by the Minister without the necessity for nomination; and

- (b) in the case of a member appointed to represent employees—

- (i) shall be nominated in the prescribed manner by such industrial unions of employees as may be prescribed; or

- (ii) if no such nomination is made within a reasonable time after the Minister requests such a nomination to be made, shall be appointed by the Minister without the necessity for nomination.

Acting members

3. (1) The Minister may appoint a person to act in the position of an appointed member.

- (2) An acting appointed member, while so acting, has all the functions of the member for whom the acting member is acting and shall be taken to be that member.

- (3) A person, while acting in the position of an appointed member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine in respect of the person.

Term of office

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

Remuneration

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

Vacancy in office of appointed member

6. (1) An appointed member ceases to hold office—

- (a) if the member—

- (i) dies; or

Industrial and Commercial Training 1989

**SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
VOCATIONAL TRAINING BOARD—*continued***

- (ii) completes a term of office and is not re-appointed; or
- (iii) resigns the office by instrument in writing addressed to the Minister; or
- (iv) is removed from office by the Minister; or
- (b) if the person or body by whom the member was nominated for appointment withdraws the nomination in the prescribed manner.
- (2) The Minister may remove an appointed member from office at any time.

Filling of vacancies

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

**SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE
VOCATIONAL TRAINING BOARD**

(Sec. 16)

Convening meetings

- 1. A meeting of the Board shall be convened by the Commissioner—
 - (a) whenever he or she thinks fit; or
 - (b) within 5 days of receipt of a written request signed by any 2 other members of the Board.

Rules for conduct of business

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

Quorum

3. The quorum for a meeting of the Board is 2 members, of whom 1 must be the Commissioner.

Procedure and decisions of the Board

- 4. (1) The Chairperson of the Board shall preside at a meeting of the Board.
- (2) A member of the Board referred to in section 16 (2) (b) is not entitled to vote at any meeting of the Board, but is entitled to be heard on any matter that is before the Board.
- (3) The Chairperson of the Board has a deliberative vote at any meeting of the Board and, in the event of an equality of votes, has a second or casting vote.

Chairperson may act as Board when other members are absent etc.

5. (1) Where, with respect to a matter arising at a meeting of the Board, there are no votes of the other members of the Board, the Chairperson of the Board may decide the matter, in which case the matter shall be taken to have been decided by the Board at the meeting.

- (2) If—

Industrial and Commercial Training 1989

**SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE
VOCATIONAL TRAINING BOARD—*continued***

- (a) the Chairperson of the Board is present at a duly convened meeting of the Board or at a time and place to which any such meeting has been adjourned; and
- (b) all of the other members of the Board are absent from the meeting or from the place at that time,

any matter that the Board is competent to deal with may be dealt with by the Chairperson, in which case the matter shall be taken to have been dealt with by the Board at a meeting.

Schedule not to apply to proceedings under Part 4

6. This Schedule does not apply to the procedure of the Board in the exercise of its functions under Part 4.

**SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
APPEAL PANEL**

(Sec. 85)

Definitions

1. In this Schedule—

“appointed member” means a member of the Appeal Panel referred to in section 85 (2) (b) or (c).

Term of office

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

Remuneration

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

Vacancy in office of member

4. (1) The office of an appointed member becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Secretary; or
 - (d) is removed from office by the Minister; or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

Industrial and Commercial Training 1989

**SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
APPEAL PANEL—*continued***

- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time on the grounds of incompetence, incapacity or misbehaviour.

Filling of vacancy in office of member

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

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 102)

Part 1—Preliminary

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

Industrial Arbitration (Industrial and Commercial Training) Amendment Act 1989

Miscellaneous Acts (Industrial and Commercial Training) Amendment Act 1989.

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to this Act 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 the enactment of the Industrial and Commercial
Training Act 1989**

Definitions

2. (1) In this Part—

“the 1981 Act” means the Apprenticeship Act 1981;

“the 1985 Act” means the Commerce and Industry Training Council Act 1985.

(2) The provisions of a regulation referred to in clause 1 shall, to the extent to which they consist of provisions of a savings or transitional nature consequent on the enactment of the Industrial and Commercial Training Act 1989, be taken to be included within this Part.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Pending proceedings etc.**

3. (1) Any proceedings that were pending before—
- (a) an apprenticeship training committee; or
 - (b) the Industrial Commission; or
 - (c) an industrial magistrate,

before the commencement of this clause may be continued and completed, and any order may be made in those proceedings and shall (subject to this Part) be given effect to, as if this Act had not been enacted.

(2) The provisions of this Part apply to and in respect of any order made, or anything done, by—

- (a) an apprenticeship training committee; or
- (b) the Industrial Commission; or
- (c) an industrial magistrate,

in any such proceedings as if the order had been made, or the thing done, immediately before the commencement of this clause.

Pending appeals

4. (1) For the purposes of any appeal proceedings, the decision of an apprenticeship training committee under the 1981 Act shall be taken to be a decision of the Board.

(2) This clause does not apply to any appeal proceedings that were pending before the Industrial Commission before the commencement of this clause.

Abolition of Councils

5. (1) The New South Wales Apprenticeship Council and the Commerce and Industry Training Council of New South Wales are abolished.

(2) A reference in any Act or statutory instrument, or in any other document, to—

- (a) the New South Wales Apprenticeship Council; or
- (b) the Commerce and Industry Training Council of New South Wales,

shall, on and from the commencement of this clause, be read as a reference to the Council constituted by section 7.

Apprenticeship training committees

6. (1) On the commencement of this clause—

- (a) each apprenticeship training committee established under the 1981 Act is dissolved; and
- (b) each member of any such committee shall become a member of the Board.

(2) A person who becomes a member of the Board pursuant to this clause shall, subject to this Act, hold office as such for 3 years from the commencement of this clause.

Apprenticeship supervisors

7. (1) A person who was an apprenticeship supervisor under the 1981 Act immediately before the commencement of this clause shall be taken to be a training officer under this Act.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) A reference in any Act or statutory instrument, or in any other document, to an apprenticeship supervisor shall, on and from the commencement of this clause, be read as a reference to a training officer.

Apprenticeships

8. An apprenticeship in force immediately before the commencement of this clause under Division 2 or 3 of Part 4 of the 1981 Act shall be taken to be an indentured apprenticeship or trainee apprenticeship, as the case may be, established under this Act.

Certificates

9. A certificate issued under section 28 or 29 of the 1981 Act before the commencement of this clause, or issued under that section as a consequence of the operation of clause 3, shall be taken to be a craft certificate issued under section 43 of this Act.

Defence Force determinations

10. On and from the commencement of this clause—

- (a) a determination under section 35 of the 1981 Act shall be taken to be a determination under section 81 of this Act; and
- (b) an instrument filed under section 35 of the 1981 Act shall be taken to be an instrument filed under section 81 of this Act; and
- (c) a certificate issued under section 35 of the 1981 Act shall be taken to be a craft certificate issued under section 81 of this Act.

Regulations

11. On and from the commencement of this clause, all regulations under the 1981 Act and the 1985 Act are repealed.

Evidence

12. Evidence of any order, decision, ruling or determination made under the authority of the 1981 Act may, on and from the commencement of this clause, be given by the production of a copy thereof duly certified by the Commissioner.

Construction of references to repealed Acts

13. A reference in any Act or statutory instrument, or in any other document, to the 1981 Act or to the 1985 Act shall, on and from the date of assent to this Act, be read as including a reference to this Act.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***The Director of Apprenticeship**

14. A reference in any Act or statutory instrument, or in any other document, to the Director of Apprenticeship shall, on and from the commencement of this clause, be read as a reference to the Commissioner.

[Minister's second reading speech made in—
Legislative Assembly on 3 May 1989
Legislative Council on 10 May 1989]



INDUSTRIAL AND COMMERCIAL TRAINING BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

The objects of this Bill are—

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

PART 1—PRELIMINARY

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

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

Industrial and Commercial Training 1989

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

PART 2—ADMINISTRATION

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

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

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

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

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

Industrial and Commercial Training 1989

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

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

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

Division 4 deals with training officers, and includes provisions—

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

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING

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

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

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

Division 2 deals with apprenticeships, and contains provisions—

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

Industrial and Commercial Training 1989

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

Division 3 deals with traineeships, and contains provisions—

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

Industrial and Commercial Training 1989

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

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

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

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

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

Industrial and Commercial Training 1989

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

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

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

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

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

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

PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

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

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

Industrial and Commercial Training 1989

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

PART 6—REVIEW AND APPEALS

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

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

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

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

PART 7—MISCELLANEOUS

This Part deals with miscellaneous matters, and contains provisions—

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

Industrial and Commercial Training 1989

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

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

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

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

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

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

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

INDUSTRIAL AND COMMERCIAL TRAINING BILL 1989

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Object of Act
4. Definitions
5. Relationship with Industrial Arbitration Act 1940
6. Act binds Crown

PART 2—ADMINISTRATION

Division 1—The Industrial and Commercial Training Council

7. Constitution of the Council
8. Objects and functions of the Council
9. Staff of the Council
10. Advisory functions of the Council
11. Advisory committees
12. Delegation by the Council

Division 2—The Commissioner for Vocational Training

13. Appointment of the Commissioner
14. Functions of the Commissioner
15. Delegation by the Commissioner

Division 3—The Vocational Training Board

16. Establishment of the Board
17. Functions of the Board
18. Sittings of the Board

Division 4—Training officers

19. Appointment of training officers
20. Functions of training officers

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING

Division 1—Establishment of training schemes

21. Declared vocations
22. Vocational training orders
23. Vocational training guidelines

Division 2—Apprenticeships

24. Persons under 21 not to be employed in declared trades unless apprentices etc.
25. Applications for establishment of apprenticeships

Industrial and Commercial Training 1989

26. Compulsory applications for apprentices who are under 21
27. Determination of applications
28. Notice of determination
29. Commencement of apprenticeships
30. Commissioner may direct apprenticeship to have effect
31. Conditions of apprenticeship
32. Vocational training directions
33. Previous time as probationary apprentice to form part of term of apprenticeship
34. Remuneration of adult apprentices
35. Extent to which apprenticeships are binding
36. Duties under apprenticeships
37. Courses of studies
38. Assignment of indentured apprenticeships
39. Cancellation and suspension of apprenticeships by consent
40. Variation of apprenticeships
41. Death of employer etc.
42. Effect of change of composition in partnership etc.
43. Completion of apprenticeship
 - Division 3—Traineeships
44. Applications for approval as a recognised trainee employer
45. Recognised trainee employers may enter traineeships
46. Applications for establishment of traineeships
47. Notice of determination
48. Commencement of traineeships
49. Conditions of traineeship
50. Vocational training directions
51. Previous time as trainee to form part of term of traineeship
52. Remuneration of adult trainees
53. Extent to which traineeships are binding
54. Duties under traineeships
55. Courses of studies
56. Assignment of traineeships
57. Cancellation of traineeships by consent
58. Variation of traineeships
59. Death of employer etc.
60. Effect of change of composition of partnership etc.
61. Completion of traineeship
 - Division 4—General
62. Apprenticeships etc. presumed to benefit apprentices etc.
63. Premiums etc. for entering apprenticeships etc.
64. Probationary apprentices not to be employed otherwise than in accordance with relevant vocational training order

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

- Division 1—Complaints
65. Complaints to be made to the Commissioner
66. Commissioner to refer complaints to the Board
67. Suspension of apprenticeships etc. pending hearing
68. Board to fix time and place for hearing complaints
69. Parties
 - Division 2—Hearings
70. Procedure generally
71. Legal representation
72. Attendance of witnesses etc.

Industrial and Commercial Training 1989

- 73. Witnesses to answer questions
- 74. Refusal to attend or to answer questions etc.
- 75. Witnesses' expenses
- 76. Adjournments
- 77. Misconduct
- 78. Costs

Division 3—Determinations

- 79. Conciliation
- 80. Determinations

PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

- 81. Recognition of Defence Force trade training
- 82. Recognition of other qualifications
- 83. Recognition of other trade training

PART 6—REVIEW AND APPEALS

Division 1—Review

- 84. Review by the Council

Division 2—Appeals

- 85. Constitution of the Appeal Panel
- 86. Appeals
- 87. Sittings of the Appeal Panel
- 88. Determination of appeals

PART 7—MISCELLANEOUS

- 89. Powers of entry to premises etc.
- 90. Search warrants
- 91. Obstruction etc. of training officers
- 92. False or misleading information
- 93. Disclosure of business information
- 94. Proceedings for offences
- 95. Applications and notices
- 96. Evidentiary certificates
- 97. Publication of certain matters
- 98. Liability
- 99. Reports
- 100. Regulations
- 101. Repeals
- 102. Savings, transitional and other provisions

SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

SCHEDULE 2—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD

SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE VOCATIONAL TRAINING BOARD

SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE APPEAL PANEL

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

INDUSTRIAL AND COMMERCIAL TRAINING BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to establish the Industrial and Commercial Training Council and the Vocational Training Board; to define the functions of those bodies; to provide for the regulation of apprenticeships and traineeships; and for other purposes.

See also Industrial Arbitration (Industrial and Commercial Training) Amendment Bill 1989; Miscellaneous Acts (Industrial and Commercial Training) Amendment Bill 1989.

Industrial and Commercial Training 1989

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Industrial and Commercial Training Act
5 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation.

- (2) Different days may be appointed for the commencement of section
10 101 in its application to different Acts or to different provisions of the same Act.

Object of Act

3. The object of this Act is to promote training within industry and commerce.

15 Definitions

4. (1) In this Act—

“advisory committee” means an advisory committee established under section 11;

“Appeal Panel” means the Appeal Panel constituted by section 85;

- 20 “apprentice” means a probationary apprentice, an indentured apprentice or a trainee apprentice;

“apprenticeship” means an apprenticeship established under Division 2 of Part 3;

- 25 “Board” means the Vocational Training Board of New South Wales constituted by section 16;

“certificate of completion” means a certificate issued under section 61, and includes a certificate of proficiency issued under that section;

“certificate of identification” means a certificate of identification issued under section 89;

- 30 “Commissioner” means the Commissioner for Vocational Training referred to in section 13;

“conciliation committee” means a conciliation committee established under section 18 of the Industrial Arbitration Act 1940;

- 35 “Council” means the Industrial and Commercial Training Council of New South Wales constituted by section 7;

“craft certificate” means a craft certificate issued under section 43, 81, 82 or 83, and includes a certificate of proficiency issued under any of those sections;

Industrial and Commercial Training 1989

- “declared calling” means a vocation that is the subject of an order in force under section 21 by which the vocation is designated to be a declared calling for the purposes of this Act;
- 5 “declared trade” means a vocation that is the subject of an order in force under section 21 by which the vocation is designated to be a declared trade for the purposes of this Act;
- “Department” means the Department of Industrial Relations and Employment;
- “employer”, in relation to an apprentice or trainee, means—
- 10 (a) the person who is, pursuant to an apprenticeship or traineeship, the employer of the apprentice or trainee; or
- (b) the person who is, in the case of a probationary apprentice, the person by whom the apprentice is for the time being actually employed;
- 15 “indentured apprentice” means an employee who is a party to an indentured apprenticeship;
- “probationary apprentice” means a person who is employed as an apprentice in a declared trade but in respect of whom—
- (a) an application for establishment of an apprenticeship has yet to be made; or
- 20 (b) such an application has been made but has yet to be determined; or
- (c) such an application has been approved but an apprenticeship between the employer and the apprentice has yet to take effect;
- 25 “public servant” means an officer or temporary employee within the meaning of the Public Sector Management Act 1988;
- “qualified tradesperson”, in relation to a trade, means—
- (a) a person who has a craft certificate in respect of that trade; or
- 30 (b) a person who has qualifications and experience that, pursuant to a determination under section 81, 82 or 83, entitle the person to a craft certificate under any of those sections;
- “recognised educational establishment” means—
- (a) a college of technical and further education, a college of advanced education or a university; or
- 35 (b) an establishment that is approved for the time being by the Council or that belongs to a class of establishments so approved;
- “recognised trainee employer” means an employer who is approved as a recognised trainee employer under section 44;
- 40 “required course of on-the-job training”, in relation to an apprentice or trainee who is employed in a declared trade or declared calling, means—

Industrial and Commercial Training 1989

(a) the course of on-the-job training that an apprentice or trainee is required by a vocational training order to undertake in connection with that trade or calling; or

5 (b) if a vocational training direction allows the apprentice or trainee to undertake an alternative course of on-the-job training—the alternative course of on-the-job training;

“required course of studies”, in relation to an apprentice or trainee who is employed in a declared trade or declared calling, means—

10 (a) the course of studies that an apprentice or trainee is required by a vocational training order to undertake in connection with that trade or calling; or

(b) if a vocational training direction allows the apprentice or trainee to undertake an alternative course of studies—the alternative course of studies;

15 “Secretary” means the Secretary of the Department;

“trainee” means an employee who is a party to a traineeship;

“trainee apprentice” means an employee who is a party to a trainee apprenticeship;

20 “traineeship” means a traineeship established under Division 3 of Part 3;

“training officer” means a training officer appointed under section 19;

“vocation” includes trade and calling;

“vocational training direction” means a direction in force under section 32 or 50;

25 “vocational training guideline” means a guideline in force under section 23;

“vocational training order” means an order in force under section 22.

(2) In this Act—

30 (a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Relationship with Industrial Arbitration Act 1940

5. In the event of an inconsistency between—

35 (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 Arbitration Act 1940, or of any regulation, order, industrial award or industrial agreement made under that Act,

Industrial and Commercial Training 1989

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

Act binds Crown

6. 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.

PART 2—ADMINISTRATION

Division 1—The Industrial and Commercial Training Council

Constitution of the Council

- 10 7. (1) There is constituted by this Act a body corporate under the corporate name of the Industrial and Commercial Training Council of New South Wales.
- (2) The Council shall consist of 13 members, of whom—
- (a) 1 shall be the Secretary; and
- 15 (b) 1 shall be the Commissioner; and
- (c) 8 shall be appointed by the Minister from persons having knowledge and experience relating to industrial or commercial training; and
- (d) 2 shall be appointed by the Minister, on the nomination of the Minister for Education and Youth Affairs, of whom 1 shall be
- 20 appointed to represent the Department of Technical and Further Education; and
- (e) 1 shall be appointed by the Minister on the nomination of the Commonwealth Minister for Employment, Education and Training.
- (3) The Secretary shall be the Chairperson of the Council.
- 25 (4) The Council—
- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown; and
- 30 (c) is, in the exercise of its functions, subject to the control and direction of the Minister.
- (5) Schedule 1 has effect with respect to the members of the Council.
- (6) Schedule 2 has effect with respect to the procedure of the Council.

Objects and functions of the Council

- 35 8. (1) The objects of the Council are—

C1

Industrial and Commercial Training 1989

- (a) to investigate matters relating to industrial and commercial employment and to the need for industrial and commercial training; and
- 5 (b) to advise the Minister on matters relating to existing and proposed courses of industrial and commercial training; and
- (c) to approve courses of industrial and commercial training to be undertaken by apprentices and trainees under this Act; and
- (d) to supervise the provision of industrial and commercial training conducted under this Act; and
- 10 (e) to monitor the provision of industrial and commercial training conducted otherwise than under this Act.

(2) The Council has such functions as are necessary or convenient to enable it to achieve its objects.

Staff of the Council

- 15 9. (1) Such staff as may be necessary to enable the Council to exercise its functions shall be employed under the Public Sector Management Act 1988.

(2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an
20 administrative office or a public or local authority.

(3) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (2), is an officer of the Council.

Advisory functions of the Council

- 25 10. (1) The Council may, and when requested by the Minister to do so shall, report to the Minister on—

- (a) changes in the nature of industry and commerce and the consequence of such changes on the need for industrial and commercial training and the way in which such training should be
30 conducted; and
- (b) the need to promote a greater amount and a higher standard of training in and for industry and commerce; and
- (c) the desirability for and the economic feasibility of providing accreditation, certification and approval of different types of
35 industrial and commercial training; and
- (d) the need for the provision of training personnel in industry and commerce; and
- (e) the manner of achieving increased consultation and co-operation on industrial and commercial training matters at places of work; and

Industrial and Commercial Training 1989

- (f) the methods for publicising the benefits to be derived from industrial and commercial training by individuals and by industry and commerce generally; and
- 5 (g) the particular action which can be taken to create additional training and employment opportunities for school leavers and other young people, retrenched employees, women seeking to rejoin the workforce, disabled people, Aborigines, migrants (particularly those with English language problems) and other disadvantaged persons or identifiable groups of persons; and
- 10 (h) the vocations to which this Act should be applied; and
- (i) other matters in relation to skill formation; and
- (j) the desirability of—
 - (i) amending this Act or the regulations; or
 - 15 (ii) developing new administrative procedures or varying existing administrative procedures,
 so as to facilitate the provision of effective industrial and commercial training.
- (2) In the exercise of its functions under this section, the Council shall have particular regard to the need for promoting, to the greatest extent
- 20 practicable, the efficient and economic use of resources for industrial and commercial training.
- (3) For the purpose of exercising its functions under this section, the Council may confer with any person or body, whether in New South Wales or elsewhere.
- 25 (4) A report made by the Council may contain such recommendations in relation to the matters dealt with in the report as the Council considers appropriate.
- (5) One or more members of the Council may prepare a minority report in connection with any matter dealt with in a report made by the Council.
- 30 (6) A minority report shall form part of the report made by the Council.

Advisory committees

- 11. (1) The Council may establish advisory committees to assist it in the exercise of its functions.
- (2) Any or all of the members of an advisory committee may be persons
- 35 who are not members of the Council.
- (3) Without limiting the generality of subsection (2), the membership of an advisory committee may comprise the members of the Board or of any other body, including any body in the nature of an industry training committee, whether established in New South Wales or elsewhere.

Industrial and Commercial Training 1989

(4) The procedure for the calling of meetings of an advisory committee, and for the conduct of business at those meetings, shall be as determined by the committee.

(5) The first meeting of an advisory committee shall be called in such manner as the Council may determine.

Delegation by the Council

12. The Council may delegate to any person or body, or to any person or body belonging to a specified class of persons or bodies, any of its functions, other than this power of delegation.

10 **Division 2—The Commissioner for Vocational Training**

Appointment of the Commissioner

13. The Governor may, under and in accordance with the Public Sector Management Act 1988, appoint a Commissioner for Vocational Training.

Functions of the Commissioner

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

Delegation by the Commissioner

20 15. The Commissioner may delegate to any person, or to any person belonging to a specified class of persons, any of the Commissioner's functions (including his or her functions as member or Chairperson of the Board), other than this power of delegation.

Division 3—The Vocational Training Board

Establishment of the Board

16. (1) There shall be a Vocational Training Board of New South Wales.
- 25 (2) The Board shall consist of at least 4 members, of whom—
- (a) 1 shall be the Commissioner; and
 - (b) at least 1 shall be a person nominated for the time being by the Director-General of Technical and Further Education for the purposes of this paragraph; and
 - 30 (c) at least 1 shall be a person appointed by the Minister to represent employers; and
 - (d) at least 1 shall be a person appointed by the Minister to represent employees.
- (3) The Commissioner is the Chairperson of the Board.
- 35 (4) Schedule 3 has effect with respect to the members of the Board.

Industrial and Commercial Training 1989

(5) Schedule 4 has effect with respect to the procedure of the Board.

Functions of the Board

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

5 Sittings of the Board

18. (1) The Board shall, for the purpose of exercising its functions, be constituted by at least 4 of its members, of whom—

- (a) 1 shall be the Commissioner or a person to whom the Commissioner has delegated his or her functions as Chairperson of the Board; and
- 10 (b) 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (b); and
- (c) at least 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (c); and
- 15 (d) at least 1 shall be a member appointed by the Commissioner from among the persons referred to in section 16 (2) (d).

(2) The number of members appointed from among the persons referred to in section 16 (2) (c) shall be the same as the number of members appointed from among the persons referred to in section 16 (2) (d).

(3) More than 1 sitting of the Board may be held at any 1 time.

- 20 (4) At any sitting of the Board, the Commissioner, or a person to whom the Commissioner has delegated his or her functions as Chairperson of the Board, shall be taken to be the Chairperson of the Board.

Division 4—Training officers

Appointment of training officers

- 25 19. (1) The Commissioner may appoint such persons (whether public servants or otherwise) as the Commissioner thinks fit to be training officers, either for particular declared trades or declared callings or for declared trades and declared callings generally.

- 30 (2) A training officer (other than a public servant) is entitled to such remuneration as the Commissioner may, with the approval of the Minister, determine in respect of the officer.

Functions of training officers

20. The functions of a training officer are—

- 35 (a) to monitor the training provided by employers to apprentices and trainees; and
- (b) to report to the Commissioner on the adequacy of such training, either generally or in a particular case; and

Industrial and Commercial Training 1989

- (c) to advise and assist employers in relation to the provision of training to apprentices and trainees; and
 - (d) to exercise such other functions as are conferred or imposed on training officers by or under this Act,
- 5 in connection with each trade or calling in respect of which the officer is appointed.

PART 3—INDUSTRIAL AND COMMERCIAL TRAINING

Division 1—Establishment of training schemes

Declared vocations

- 10 **21. (1)** The Minister may, by order published in the Gazette, designate any vocation to be a declared trade or declared calling for the purposes of this Act.
- (2) The same vocation may be both a declared trade and a declared calling.

15 Vocational training orders

- 22. (1)** The Council may from time to time make orders specifying, in relation to a particular declared trade or declared calling—
- (a) the appropriate term of apprenticeship or traineeship in that trade or calling; and
 - 20 (b) the appropriate courses of studies to be undertaken by apprentices or trainees in that trade or calling; and
 - (c) the appropriate courses of on-the-job training to be provided to apprentices or trainees by employers in that trade or calling; and
 - 25 (d) such other matters relating to the training of apprentices or trainees in that trade or calling as the Council considers appropriate.
- (2) Such an order applies to an apprenticeship or traineeship whether or not the apprenticeship or traineeship was established before the order took effect, but does not, unless it expressly so provides, affect—
- 30 (a) any vocational training direction in force in respect of the apprenticeship or traineeship; or
 - (b) any course of studies or course of on-the-job training that is being undertaken, or that has been completed, by apprentices or trainees in that trade or calling,
- prior to the making of the order.
- 35 **(3)** An order made under this section takes effect when notice of its making is published in the Gazette.
- (4)** Such a notice shall identify the order, shall contain brief particulars of the substance of the order and shall specify that a copy of the order may be obtained from the offices of the Department.

Industrial and Commercial Training 1989

(5) Copies of each order made under this section shall be kept at the offices of the Department and shall be made available for public inspection free of charge, and for purchase, during ordinary office hours.

Vocational training guidelines

- 5 23. (1) The Council may from time to time issue guidelines, in relation to a particular declared trade or declared calling or in relation to declared trades or declared callings generally, as to how the functions under this Part in respect of any such trade or calling shall be exercised by the Board or by the Commissioner.
- 10 (2) Copies of each guideline issued under this section shall be kept at the offices of the Department and shall be made available for public inspection free of charge, and for purchase, during ordinary office hours.

Division 2—Apprenticeships

Persons under 21 not to be employed in declared trades unless apprentices etc.

- 15 24. (1) An employer shall not employ a person who is under the age of 21 years in a declared trade unless the employed person is an apprentice or qualified tradesperson in that trade.

Maximum penalty: 10 penalty units.

- 20 (2) This section does not apply to—
- (a) the employment of a person in a declared trade that is also a declared calling; or
 - (b) the employment of a person in a declared trade by a parent of the person; or
- 25 (c) the employment of a person in a declared trade, or in any area of a declared trade, that is exempted by the regulations from the operation of this section.

- (3) An employer shall not employ a person as a probationary apprentice in a declared trade for a period of, or for periods totalling, more than 3 months, otherwise than with the consent of the Commissioner.

30 Maximum penalty: 5 penalty units.

(4) The Commissioner may consent to the employment of a person as a probationary apprentice for a further period of, or for further periods totalling, not more than 3 months.

35 Applications for establishment of apprenticeships

25. (1) An employer who employs a person in a declared trade may apply to the Commissioner for the establishment of an apprenticeship for the person.

Industrial and Commercial Training 1989

(2) An application for establishment of an apprenticeship shall specify whether the proposed apprenticeship is to be served under an indentured apprenticeship or under a trainee apprenticeship.

Compulsory applications for apprentices who are under 21

- 5 26. (1) An employer who employs a person (being a person who is under the age of 21 years) as a probationary apprentice in a declared trade shall, within 14 days after the person is first employed by the employer, apply to the Commissioner for the establishment of an apprenticeship in that trade for the person.
- 10 Maximum penalty: 5 penalty units.

(2) Nothing in this section prevents an application that is made later than 14 days after the person is first employed from being considered under this Division.

Determination of applications

- 15 27. (1) The Commissioner shall deal with an application for establishment of an apprenticeship—
- (a) by approving the application; or
 - (b) by dismissing the application; or
 - (c) by referring the application to the Board.
- 20 (2) The Board shall deal with an application referred to it under this section—
- (a) by approving the application; or
 - (b) by dismissing the application.
- 25 (3) An application for establishment of an apprenticeship shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the prospective employer has the ability to provide proper training in the relevant trade.

Notice of determination

- 30 28. (1) As soon as practicable after an application for establishment of an apprenticeship has been determined, the Commissioner shall cause notice of the determination, together with a copy of any vocational training direction made in relation to the application, to be given to the applicant.
- (2) If the application specifies that the proposed apprenticeship is to be served under an indentured apprenticeship, the Commissioner shall, within
- 35 3 months after the application is approved, cause indentures (in such form as may be approved for the time being by the Commissioner) to be sent to the employer for execution by the employer and by the apprentice.

Industrial and Commercial Training 1989

(3) If the application specifies that the proposed apprenticeship is to be served under a trainee apprenticeship, the Commissioner shall, as soon as practicable after the application is approved, cause a progress card to be sent to the employer for use in recording the progress of the apprentice.

- 5 (4) An employer to whom indentures are sent under this section shall return the indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer.

Maximum penalty: 10 penalty units.

Commencement of apprenticeships

- 10 29. (1) An indentured apprenticeship takes effect when indentures—
 (a) signed by the employer and by the apprentice; and
 (b) in the case of an apprentice who is under the age of 18 years—
 accompanied by the written consent of a parent or guardian of the
 apprentice to the establishment of the apprenticeship,
 15 are lodged with the Commissioner.

(2) A trainee apprenticeship takes effect on such date as is specified in that regard on the progress card sent to the employer in respect of the apprenticeship.

Commissioner may direct apprenticeship to have effect

- 20 30. (1) If an employer—
 (a) fails to make an application for the establishment of an
 apprenticeship within 3 months after a probationary apprentice who
 is under the age of 21 years is first employed by the employer; or
 25 (b) fails to return indentures to the Commissioner (whether or not they
 have been duly executed) within 1 month after they were sent to the
 employer under section 28,

the Commissioner may, on the application of the apprentice, direct that an indentured apprenticeship be taken to have come into effect, as from the expiry of that period, between the employer and the apprentice.

- 30 (2) As soon as practicable after giving such a direction, the Commissioner shall cause indentures, endorsed by the Commissioner in such manner as the Commissioner may determine, to be sent to the employer and to the apprentice.

Conditions of apprenticeship

- 35 31. Except as otherwise provided by a vocational training direction, the conditions of an apprenticeship, including—
 (a) the term of the apprenticeship; and
 (b) the course of studies to be undertaken by the apprentice; and

Df

Industrial and Commercial Training 1989

(c) the course of on-the-job training to be undertaken by the apprentice, shall be as specified by the relevant vocational training order.

Vocational training directions

5 **32. (1)** The Commissioner or the Board may, when determining an application for establishment of an apprenticeship, make a vocational training direction in relation to the proposed apprenticeship.

(2) A vocational training direction may—

- (a) reduce or extend the term of the apprenticeship; or
- 10 (b) approve an alternative course of studies to be undertaken by the apprentice; or
- (c) approve an alternative course of on-the-job training to be undertaken by the apprentice.

(3) In making a vocational training direction, the Commissioner or the Board—

- 15 (a) shall have regard to any relevant instruction or training that the apprentice has received—
 - (i) whether as an apprentice or otherwise; and
 - (ii) whether in the particular trade or in some other trade or calling; and
 - 20 (iii) whether in New South Wales or elsewhere; and
- (b) may have regard to any other matter that the Commissioner or the Board considers relevant; and
- (c) shall comply with any relevant vocational training guidelines.

25 **Previous time as probationary apprentice to form part of term of apprenticeship**

33. The period of time during which a person is a probationary apprentice in a declared trade shall, if the person subsequently becomes an apprentice under an apprenticeship in that trade, be taken to form part of the term of the person's apprenticeship.

30 **Remuneration of adult apprentices**

34. (1) If—

- (a) an apprenticeship is established in a declared trade for a person who is of or above the age of 21 years; and
- 35 (b) there is no industrial award or industrial agreement in force under which a rate of remuneration is set for apprentices in that trade who are of or above the age of 21 years, but there is such an award or agreement in force under which a rate of remuneration is set for apprentices who are under that age,

Industrial and Commercial Training 1989

the minimum rate of remuneration for that person shall be the relevant rate of remuneration set by the award or agreement for apprentices in that trade who are under the age of 21 years, being apprentices who are at the same stage of apprenticeship in that trade.

5 (2) A rate of remuneration set by this section has effect as if it formed part of an industrial award that applied to the person for whom it is set, and any remuneration payable under this section may be recovered accordingly.

10 (3) This section does not apply to an apprenticeship between an employer and an apprentice if the employer is a parent of the apprentice.

Extent to which apprenticeships are binding

35. (1) Duly executed indentures that have been returned to the Commissioner (including indentures endorsed by the Commissioner in accordance with section 30)—

- 15 (a) have effect as if they were a deed duly executed by the employer and by the apprentice; and
- (b) bind the employer and the apprentice throughout the term of the apprenticeship.

20 (2) A trainee apprenticeship binds the employer and the apprentice for so long as the apprentice remains in the employ of the employer.

Duties under apprenticeships

36. (1) The employer of an apprentice shall—

- 25 (a) take all reasonable steps to cause the apprentice to be instructed in the skills of the declared trade in which he or she is an apprentice; and
- (b) provide all necessary facilities to ensure that the apprentice receives appropriate practical training in that trade; and
- 30 (c) take all reasonable steps to enable the apprentice to undertake and complete the required course of studies and the required course of on-the-job training for that trade; and
- (d) give the apprentice a reasonable opportunity to receive such other instruction or training as may be necessary to enable the apprentice to learn the skills of that trade.

(2) An apprentice shall—

- 35 (a) make all reasonable efforts to acquire the skills of the trade in which he or she is an apprentice; and
- (b) accept all instruction and training in that trade given to the apprentice by or on behalf of the employer; and
- 40 (c) make all reasonable efforts to complete the required course of studies and the required course of on-the-job training for that trade; and

Industrial and Commercial Training 1989

(d) discharge his or her obligations as an employee of the employer.

Courses of studies

37. (1) An apprentice, in undertaking the required course of studies for the declared trade in which he or she is an apprentice, shall comply with the requirements of the recognised educational establishment by which the course is conducted.

(2) Time spent by an apprentice in undertaking any such course of studies shall be taken to form part of the time required by the apprenticeship to be spent in discharging his or her obligations under the apprenticeship.

10 Assignment of indentured apprenticeships

38. (1) An indentured apprenticeship may not be assigned from one employer to another otherwise than in accordance with this section.

(2) An application for approval to the assignment of an indentured apprenticeship may be made to the Commissioner by the prospective employer.

(3) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

20 (4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

25 (5) An indentured apprenticeship shall not be assigned unless the Commissioner or the Board, as the case may be, is satisfied—

- (a) that the prospective employer has the ability to provide proper training in the relevant trade; and
- (b) that the apprentice consents to the assignment of the apprenticeship.

(6) If—

- 30 (a) approval has been given to the assignment of an indentured apprenticeship; and
- (b) the Commissioner is satisfied that the apprentice's existing employer consents to the assignment,

35 the Commissioner shall effect the assignment by giving notice of the assignment to the existing employer, to the prospective employer and to the apprentice.

(7) If the Commissioner—

Industrial and Commercial Training 1989

- (a) sends a notice to an employer who is a party to an indentured apprenticeship—
 - (i) addressed to the last address of the employer known to the Commissioner; and
 - 5 (ii) requesting the employer to notify the Commissioner whether or not the employer consents to the assignment of the apprenticeship to another employer; and
- (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,
- 10 the consent of the employer to whom the notice was sent shall be taken to have been given.

Cancellation and suspension of apprenticeships by consent

39. (1) An apprenticeship may be cancelled or suspended by consent of the employer and of the apprentice.

- 15 **(2)** If the Commissioner—
 - (a) sends a notice to the employer or to the apprentice—
 - (i) addressed to the last address of the person known to the Commissioner; and
 - 20 (ii) requesting the person to notify the Commissioner whether or not the person consents to the cancellation or suspension of the apprenticeship; and
 - (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,
- the consent of the person to whom the notice was sent shall be taken to
- 25 have been given.

(3) Within 14 days after the cancellation or suspension of an apprenticeship, the employer concerned shall give notice of the cancellation or suspension to the Commissioner.

Maximum penalty: 5 penalty units.

30 Variation of apprenticeships

40. (1) An apprenticeship may not be varied otherwise than in accordance with this section.

(2) An application for variation of an apprenticeship may be made to the Commissioner by the employer or by the apprentice.

- 35 **(3)** The Commissioner shall deal with the application—
 - (a) by approving the application; or
 - (b) by dismissing the application; or
 - (c) by referring the application to the Board.

Industrial and Commercial Training 1989

(4) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

5 (5) An apprenticeship shall not be varied in a manner that contravenes any relevant vocational training guideline.

Death of employer etc.

41. (1) If—

- (a) the employer of an apprentice dies; and
- 10 (b) the business in which the apprentice 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 shall be taken not to have been determined by the death of the employer.

15 (2) Unless cancellation of the apprenticeship is approved by the Board on the application of those executors or administrators, or of the apprentice, the apprenticeship continues to bind those executors or administrators as if they were the employers of the apprentice.

Effect of change of composition in partnership etc.

20 42. (1) If—

- (a) the employers of an apprentice are partners in a partnership; and
- (b) the business in which the apprentice is employed is carried on by the partners for the time being after a change in the composition of the partnership,

25 the apprenticeship shall be taken not to have been determined by that change.

(2) Unless cancellation of the apprenticeship is approved by the Board on the application of those partners, or of the apprentice, the apprenticeship continues to bind those partners as if they were the employers of the
30 apprentice.

Completion of apprenticeship

43. (1) As soon as practicable after an apprentice completes his or her term of apprenticeship in a declared trade, the Commissioner shall, if satisfied that the apprentice is adequately trained to pursue that trade, cause
35 a craft certificate in that trade to be given to the apprentice.

(2) An apprentice who has completed his or her term of apprenticeship in a declared trade, and who has successfully completed the required course of studies for that trade, is entitled to be issued instead with a certificate of proficiency in that trade.

Division 3—Traineeships**Applications for approval as a recognised trainee employer**

44. (1) An employer in a declared calling may apply to the Commissioner for approval of the employer as a recognised trainee
5 employer in that calling.

(2) The Commissioner shall deal with the application—

- (a) by approving the application; or
- (b) by dismissing the application; or
- (c) by referring the application to the Board.

10 (3) The Board shall deal with an application referred to it under this section—

- (a) by approving the application; or
- (b) by dismissing the application.

(4) An application for approval of an employer as a recognised trainee
15 employer shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the employer has the ability to provide proper training in the relevant calling.

Recognised trainee employers may enter traineeships

45. (1) A recognised trainee employer who is engaged in a declared
20 calling may enter into a traineeship in that calling with any of the employer's employees.

(2) The indentures by which a recognised trainee employer and an employee enter into such a traineeship shall be in such form as may be approved for the time being by the Commissioner.

25 Applications for establishment of traineeships

46. (1) An employer (whether or not a recognised trainee employer) who employs a person in a declared calling may apply to the Commissioner for the establishment of a traineeship for the person.

(2) The Commissioner shall deal with the application—

- 30
- (a) by approving the application; or
 - (b) by dismissing the application; or
 - (c) by referring the application to the Board.

(3) The Board shall deal with an application referred to it under this section—

- 35
- (a) by approving the application; or
 - (b) by dismissing the application.

Industrial and Commercial Training 1989

(4) An application for establishment of a traineeship shall not be approved unless the Commissioner or the Board, as the case may be, is satisfied that the prospective employer has the ability to provide proper training in the relevant calling.

5 Notice of determination

47. (1) As soon as practicable after an application for establishment of a traineeship has been determined, the Commissioner shall cause notice of the determination, together with a copy of any vocational training direction made in relation to the application, to be given to the applicant.

- 10 (2) The Commissioner shall, within 3 months after the application is approved, cause indentures (in such form as may be approved for the time being by the Commissioner) to be sent to the employer for execution by the employer and by the trainee.

- (3) An employer to whom indentures are sent under this section shall
15 return the indentures to the Commissioner (whether or not they have been duly executed) within 1 month after they were sent to the employer.

Maximum penalty: 10 penalty units.

Commencement of traineeships

48. A traineeship takes effect when indentures—

- 20 (a) signed by the employer and by the trainee; and
(b) in the case of a trainee who is under the age of 18 years—
accompanied by the written consent of a parent or guardian of the
trainee to the establishment of the traineeship,
are lodged with the Commissioner.

25 Conditions of traineeship

49. Except as otherwise provided by a vocational training direction, the conditions of a traineeship, including—

- (a) the term of the traineeship; and
(b) the course of studies to be undertaken by the trainee; and
30 (c) the course of on-the-job training to be undertaken by the trainee,
shall be as specified by the relevant vocational training order.

Vocational training directions

50. (1) The Commissioner or the Board may, when determining an
application for establishment of a traineeship, make a vocational training
35 direction in relation to the proposed traineeship.

(2) A vocational training direction may—

- (a) reduce or extend the term of the traineeship; or

Industrial and Commercial Training 1989

- (b) approve an alternative course of studies to be undertaken by the trainee; or
 - (c) approve an alternative course of on-the-job training to be undertaken by the trainee.
- 5 **(3)** In making a vocational training direction, the Commissioner or the Board—
- (a) shall have regard to any relevant instruction or training that the trainee has received—
 - (i) whether as a trainee or otherwise; and
 - 10 (ii) whether in the particular calling or in some other trade or calling; and
 - (iii) whether in New South Wales or elsewhere; and
 - (b) shall comply with any relevant vocational training guidelines.

Previous time as trainee to form part of term of traineeship

- 15 **51.** The period of time during which a person is employed in a declared calling pending the establishment of traineeship in that calling shall, if the person subsequently becomes a trainee under a traineeship in that calling, be taken to form part of the term of the person's traineeship.

Remuneration of adult trainees

- 20 **52. (1)** If—
- (a) a traineeship is established in a declared calling for a person who is of or above the age of 21 years; and
 - (b) there is no industrial award or industrial agreement in force under which a rate of remuneration is set for trainees in that calling who
 - 25 are of or above the age of 21 years, but there is such an award or agreement in force under which a rate of remuneration is set for trainees who are under that age,

the minimum rate of remuneration for that person shall be the highest minimum rate of remuneration set by the award or agreement for trainees

30 in that calling who are under the age of 21 years.

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

Extent to which traineeships are binding

53. Duly executed indentures that have been returned to the Commissioner—

Industrial and Commercial Training 1989

- (a) have effect as if they were a deed duly executed by the employer and by the trainee; and
- (b) bind the employer and the trainee throughout the term of the traineeship.

5 Duties under traineeships**54. (1)** The employer of a trainee shall—

- (a) take all reasonable steps to cause the trainee to be instructed in the skills of the declared calling in which he or she is a trainee; and
- 10 (b) provide all necessary facilities to ensure that the trainee receives appropriate practical training in that calling; and
- (c) take all reasonable steps to enable the trainee to undertake and complete the required course of studies and the required course of on-the-job training for that calling; and
- 15 (d) give the trainee a reasonable opportunity to receive such other instruction or training as may be necessary to enable the trainee to learn the skills of that calling.

(2) A trainee shall—

- (a) make all reasonable efforts to acquire the skills of the calling in which he or she is a trainee; and
- 20 (b) accept all instruction and training in that calling given to the trainee by or on behalf of the employer; and
- (c) make all reasonable efforts to complete the required course of studies and the required course of on-the-job training for that calling; and
- (d) discharge his or her obligations as an employee of the employer.

25 Courses of studies

55. (1) A trainee, in undertaking the required course of studies for the declared calling in which he or she is a trainee, shall comply with the requirements of the recognised educational establishment by which the course is conducted.

- 30 **(2)** Time spent by a trainee in undertaking any such course of studies shall be taken to form part of the time required by the traineeship to be spent in discharging his or her obligations under the traineeship.

Assignment of traineeships

- 35 **56. (1)** A traineeship may not be assigned from one employer to another otherwise than in accordance with this section.

(2) An application for approval to the assignment of a traineeship may be made to the Commissioner by the prospective employer.

(3) The Commissioner shall deal with the application—

Industrial and Commercial Training 1989

- (a) by approving the application; or
 - (b) by dismissing the application; or
 - (c) by referring the application to the Board.
- (4) The Board shall deal with an application referred to it under this section—
- (a) by approving the application; or
 - (b) by dismissing the application.
- (5) A traineeship shall not be assigned unless the Commissioner or the Board, as the case may be, is satisfied—
- 10 (a) that the prospective employer has the ability to provide proper training in the relevant calling; and
 - (b) that the trainee consents to the assignment of the traineeship.
- (6) If—
- (a) approval has been given to the assignment of a traineeship; and
 - 15 (b) the Commissioner is satisfied that the trainee's existing employer consents to the assignment,
- the Commissioner shall effect the assignment by giving notice of the assignment to the existing employer, to the prospective employer and to the trainee.
- 20 (7) If the Commissioner—
- (a) sends a notice to an employer who is a party to a traineeship—
 - (i) addressed to the last address of the employer known to the Commissioner; and
 - 25 (ii) requesting the employer to notify the Commissioner whether or not the employer consents to the assignment of the traineeship to another employer; and
 - (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,
- the consent of the employer to whom the notice was sent shall be taken to
- 30 have been given.

Cancellation of traineeships by consent

57. (1) A traineeship may be cancelled by consent of the employer and of the trainee.

- (2) If the Commissioner—
- 35 (a) sends a notice to the employer or to the trainee—
 - (i) addressed to the last address of the person known to the Commissioner; and

Industrial and Commercial Training 1989

(ii) requesting the person to notify the Commissioner whether or not the person consents to the cancellation of the traineeship; and

5 (b) does not receive any reply to that request within 21 days after the date on which the notice was sent,

the consent of the person to whom the notice was sent shall be taken to have been given.

(3) Within 14 days after the cancellation of a traineeship, the employer concerned shall give notice of the cancellation to the Commissioner.

10 Maximum penalty: 5 penalty units.

Variation of traineeships

58. (1) A traineeship may not be varied otherwise than in accordance with this section.

15 (2) An application for variation of a traineeship may be made to the Commissioner by the employer or by the trainee.

(3) The Commissioner shall deal with the application—

(a) by approving the application; or

(b) by dismissing the application; or

(c) by referring the application to the Board.

20 (4) The Board shall deal with an application referred to it under this section—

(a) by approving the application; or

(b) by dismissing the application.

25 (5) A traineeship shall not be varied in a manner that contravenes any relevant vocational training guideline.

Death of employer etc.

59. (1) If—

(a) the employer of a trainee dies; and

30 (b) the business in which the 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 traineeship shall be taken not to have been determined by the death of the employer.

35 (2) Unless cancellation of the traineeship is approved by the Board on the application of those executors or administrators, or of the trainee, the traineeship continues to bind those executors or administrators as if they were the employers of the trainee.

Effect of change of composition of partnership etc.**60. (1) If—**

- (a) the employers of a trainee are partners in a partnership; and
 - (b) the business in which the trainee is employed is carried on by the partners for the time being after a change in the composition of the partnership,
- the traineeship shall be taken not to have been determined by that change.

- (2) Unless cancellation of the traineeship is approved by the Board on the application of those partners, or of the trainee, the traineeship continues to bind those partners as if they were the employers of the trainee.

Completion of traineeship

61. (1) As soon as practicable after a trainee completes his or her term of traineeship in a declared calling, the Commissioner shall, if satisfied that the trainee is adequately trained in that calling, cause a certificate of completion in that calling to be given to the trainee.

(2) A trainee who has completed his or her term of traineeship in a declared calling, and who has successfully completed the required course of studies for that calling, is entitled to be issued instead with a certificate of proficiency in that calling.

20

Division 4—General**Apprenticeships etc. presumed to benefit apprentices etc.**

62. In the application of the Minors (Property and Contracts) Act 1970 to—

- (a) an apprenticeship into which a minor has entered as an apprentice; or
 - (b) a traineeship into which a minor has entered as a trainee,
- the participation by the minor in the apprenticeship or traineeship shall, in the absence of evidence to the contrary, be taken to be for the benefit of the minor.

30 Premiums etc. for entering apprenticeships etc.

63. A person shall not—

- (a) directly or indirectly—
 - (i) require or permit any other person to pay or to give; or
 - (ii) demand or receive from any other person,
- any fee or reward; or
- (b) require any other person to enter into any bond or guarantee,

Industrial and Commercial Training 1989

for or with respect to that other person's entering into an apprenticeship or traineeship with the first person, or with any other person, without having first obtained the consent of the Board.

Maximum penalty: 10 penalty units.

5 Probationary apprentices not to be employed otherwise than in accordance with relevant vocational training order

64. An employer shall not employ a probationary apprentice in a declared trade otherwise than in accordance with the relevant vocational training order.

10 Maximum penalty: 10 penalty units.

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

Division 1—Complaints

15 Complaints to be made to the Commissioner

65. (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
- 20 (b) by a training officer for the relevant trade or calling (other than a training officer who is not a public servant).

(2) A complaint that a party to an apprenticeship or traineeship has refused to consent to—

- (a) the assignment of an indentured apprenticeship or traineeship; or
- 25 (b) the suspension or cancellation of an apprenticeship or traineeship, may be made by the other party to the apprenticeship or traineeship.

(3) A complaint shall be lodged at, or sent by post to, the offices of the Commissioner.

Commissioner to refer complaints to the Board

30 **66. (1)** The Commissioner shall refer all complaints to the Board for determination by the Board.

(2) The Commissioner shall not refer to the Board a complaint made by a party to an apprenticeship or traineeship unless the Commissioner has attempted to bring each of the parties to the apprenticeship or traineeship
35 to a settlement acceptable to all of them.

Suspension of apprenticeships etc. pending hearing

67. (1) If the Commissioner is satisfied that the gravity of a complaint justifies such action, the Commissioner may suspend the relevant apprenticeship or traineeship pending the hearing of the complaint.

- 5 (2) The suspension of an apprenticeship or traineeship under this section has effect until the complaint is withdrawn or determined.

Board to fix time and place for hearing complaints

68. The Board shall fix a time and place for the hearing of a complaint and shall cause notice of the time and place so fixed to be given to the
10 complainant and to each of the parties to the relevant apprenticeship or traineeship.

Parties

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

15

Division 2—Hearings**Procedure generally**

70. (1) The Board is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it thinks fit.

- 20 (2) A hearing shall be conducted with as little formality and legal technicality as the circumstances of the case permit.

(3) A hearing shall be conducted in the absence of the public.

Legal representation

71. (1) A party to a hearing is not entitled to be represented by a
25 barrister or solicitor except with the consent of the Board 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 union of employers or employees; and
30 (b) does not prevent the Crown, or a party that is a corporation or an industrial union of employers or employees, from appearing by a barrister or solicitor.

- (3) At any hearing at which the Crown, or a party that is a corporation or an industrial union of employers or employees, appears by a barrister or
35 solicitor, each of the other parties to the hearing is entitled to be represented at the hearing by a barrister or solicitor.

*Industrial and Commercial Training 1989***Attendance of witnesses etc.****72. (1) The Board—****(a) may require a person—**

(i) to attend a hearing for the purpose of giving evidence; or

5 (ii) to produce to the Board any document that is relevant to a hearing,

at a time, date and place specified in a notice served on the person; and

10 (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.

15 (2) The Board may retain possession of a document produced to it pursuant to this section for such period as it considers necessary for the purpose of completing the hearing.

Witnesses to answer questions

73. (1) The Board may require a person who attends a hearing to answer any question that is reasonably related to the hearing.

20 (2) A person may refuse to answer a question on the ground that the answer might tend to incriminate the person.

Refusal to attend or to answer questions etc.**74. (1) A person—**

25 (a) shall not fail to comply with a requirement to attend a hearing, or to produce a document or to answer a question, to the extent to which the person is lawfully able to comply with the requirement; and

(b) shall 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.

30 Maximum penalty: 5 penalty units.

(2) Subsection (1) (b) does not apply to statements made on oath.

Witnesses' expenses

35 75. A person (other than a public servant) who is required to attend or to give evidence at a hearing is entitled to be paid such allowances and expenses as may be prescribed.

Adjournments

76. The Board may from time to time adjourn a hearing to such time, date and place, and for such reasons, as it considers fit.

*Industrial and Commercial Training 1989***Misconduct**

77. A person shall not misconduct himself or herself at a hearing.

Maximum penalty: 5 penalty units.

Costs

5 78. Each party to a hearing shall bear his or her own costs of the hearing.

Division 3—Determinations**Conciliation**

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

Determinations

80. (1) The Board shall determine a complaint made under section 65 (1)—

- 15 (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 Board considers appropriate; or
- 20 (c) by varying, suspending or cancelling the apprenticeship or traineeship to which the complaint relates; or
- (d) by dismissing the complaint.

(2) The Board shall not cancel or suspend an apprenticeship or traineeship under subsection (1) unless it is satisfied that—

- 25 (a) one of the parties is unwilling or unable 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
 - 30 (ii) no other employer can be found who is willing to assume those obligations.

(3) The Board shall determine a complaint made under section 65 (2)—

- (a) by directing that the requirement for consent referred to in that subsection be waived; or
- 35 (b) by dismissing the complaint.

(4) The Commissioner shall cause notice of the Board's determination to be given to each of the parties to the hearing.

(5) On the making of a determination that varies, suspends or cancels an apprenticeship or traineeship, the apprenticeship or traineeship shall be taken to be varied, suspended or cancelled, as the case may be, in accordance with the determination.

5 PART 5—RECOGNITION OF OTHER TRADE QUALIFICATIONS

Recognition of Defence Force trade training

81. (1) In this section—

“Defence Force” means the Defence Force of the Commonwealth;

10 “service adult trade training” means training undertaken by a member of the Defence Force pursuant to 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.

15 (2) The Board 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 declared trade will be accorded recognition in that trade.

20 (3) The Board may determine that the course of training provided for a class of service apprenticeship or service adult trade training in a declared trade is such that a person—

(a) who satisfactorily completes the course; and

25 (b) who complies with such further conditions as to experience or otherwise as the Board may determine,

is adequately trained to pursue that trade.

(4) A determination under this section—

(a) shall be set out in an instrument signed by the Commissioner; and

(b) shall be filed by the Commissioner,

30 and a copy of the instrument shall be sent by the Commissioner to the relevant Defence Force authority.

(5) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to a person who satisfies the Commissioner that the person—

35 (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.

Recognition of other qualifications

82. (1) The Board may, on the application of any person or on its own motion, determine that a person—

- 5 (a) who has specified qualifications in a declared trade (being qualifications obtained elsewhere than in New South Wales); and
(b) who complies with such further conditions as to experience or otherwise as the Board may determine,
is adequately trained to pursue that trade.

(2) A determination under this section—

- 10 (a) shall be set out in an instrument signed by the Commissioner; and
(b) shall be filed by the Commissioner.

(3) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to a person who satisfies the Commissioner that the person—

- 15 (a) has the qualifications to which such a determination relates; and
(b) has complied with any other conditions prescribed by the determination.

Recognition of other trade training

83. (1) A person may apply to the Commissioner for recognition of the
20 person's qualifications or experience in a particular declared trade.

(2) The Commissioner shall refer the application to the Board.

(3) If the Board is satisfied that the applicant has acquired the skills of the declared trade, it may determine that the applicant is adequately trained to pursue that trade.

25 (4) In making such a determination, the Board shall have regard to—

- (a) the length of time for which the applicant has been working in the declared trade; and
(b) the nature and duration of any instruction or training received by the applicant in the declared trade; and
30 (c) the nature of any qualifications held by the applicant in relation to the declared trade; and
(d) such other matters (including the applicant's performance in any examination or test set by the Board) as it considers relevant.

(5) A determination under this section—

- 35 (a) shall be set out in an instrument signed by the Commissioner; and
(b) shall be filed by the Commissioner.

(6) The Commissioner shall issue a craft certificate or a certificate of proficiency, whichever is appropriate, to the person to whom the determination relates.

*Industrial and Commercial Training 1989***PART 6—REVIEW AND APPEALS****Division 1—Review****Review by the Council**

84. (1) The Board may, and when requested by the Council shall, refer
5 to the Council any matter that is before the Board for determination under Part 3 or 5.

(2) The Council may determine any matter referred to it under this section or may refer the matter back to the Board for determination by the Board.

10 (3) The provisions of Parts 3 and 5 apply to matter that is referred to the Council under this section in the same way as they apply to matter before the Board.

(4) The Council may not delegate its functions under this section.

Division 2—Appeals**15 Constitution of the Appeal Panel**

85. (1) There shall be an Appeal Panel.

(2) The Appeal Panel shall consist of at least 3 persons, of whom—

- (a) at least 1 shall be an officer of the Department appointed by the Secretary; and
- 20 (b) at least 1 shall be a person appointed by the Minister to represent employers; and
- (c) at least 1 shall be a person appointed by the Minister to represent employees.

(3) Schedule 5 has effect with respect to the members of the Appeal
25 Panel.

Appeals

86. An appeal to the Appeal Panel may be made, in accordance with the regulations—

- 30 (a) from any decision by the Board or by the Commissioner dismissing an application for establishment of an apprenticeship or traineeship; or
- (b) from any vocational training direction made by the Board or by the Commissioner; or
- 35 (c) from any decision by the Board or by the Commissioner dismissing an application for approval to the assignment of an indentured apprenticeship or traineeship; or
- (d) from any decision by the Board or by the Commissioner dismissing an application for variation of an apprenticeship or traineeship; or

Industrial and Commercial Training 1989

- (e) from any decision by the Board or by the Commissioner pursuant to which an apprenticeship or traineeship has been varied; or
- (f) from any refusal by the Commissioner to issue a craft certificate or certificate of completion under Part 3 or 5; or
- 5 (g) from any decision by the Board or by the Commissioner dismissing an application for approval as a recognised trainee employer; or
- (h) from any decision by the Commissioner refusing to refer a complaint under Part 4 for determination by the Board; or
- 10 (i) from any determination by the Board in respect of a complaint under Part 4; or
- (j) from any determination by the Board under section 83 that denies recognition of a person's qualifications or experience in a particular declared trade; or
- 15 (k) from any decision by the Council in the exercise of its functions under section 84.

Sittings of the Appeal Panel

87. (1) The Appeal Panel shall, for the purposes of hearing and determining an appeal, be constituted by 3 of its members, of whom—

- 20 (a) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (a); and
- (b) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (b); and
- (c) 1 shall be a member appointed by the Secretary from among the persons referred to in section 85 (2) (c).

25 (2) The person referred to in subsection (1) (a) shall be the presiding member of the Appeal Panel for the purposes of the appeal in respect of which the Appeal Panel is constituted.

(3) When constituted for the purposes of hearing and determining an appeal from a decision or determination by the Board, the Appeal Panel
30 shall not be constituted so as to include a member of the Appeal Panel who is also a member of the Board.

(4) More than 1 sitting of the Appeal Panel may be held at any 1 time.

Determination of appeals

88. (1) An appeal shall be dealt with by way of a new hearing, and fresh
35 evidence or fresh information may be given on the appeal.

(2) The provisions of Division 2 of Part 4 apply to proceedings before the Appeal Panel in the same way as they apply to proceedings before the Board under that Part.

Industrial and Commercial Training 1989

(3) The provisions of Division 3 of Part 4 apply to proceedings before the Appeal Panel on an appeal from a determination by the Board under Part 4 in the same way as they apply to proceedings before the Board under that Part.

- 5 (4) The decision of the Appeal Panel is final and shall be given effect to as if it were the decision of the person or body in respect of whose decision, determination, action or failure to act the appeal has been made.

PART 7—MISCELLANEOUS**Powers of entry to premises etc.**

- 10 89. (1) A training officer may exercise any one or more of the following powers:

(a) such an officer may enter any premises or place in or on which a declared trade or declared calling is conducted;

(b) such an officer may examine—

- 15 (i) any plant, equipment, material or substance used in relation to any such trade or calling; and

(ii) any document relating to any such trade or calling, found in or on the premises or place;

- 20 (c) such an officer may take copies of, or extracts or notes from, any document relating to any such trade or calling found in or on the premises or place;

(d) such an officer may require any person found in or on the premises or place to produce—

- 25 (i) any plant, equipment, material or substance used in relation to any such trade or calling; or

(ii) any document relating to any such trade or calling, that is in the possession or under the control of that person.

(2) A person shall not fail to comply with a requirement made by a training officer under subsection (1) (d).

- 30 Maximum penalty: 10 penalty units.

(3) A 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, a training officer—

Industrial and Commercial Training 1989

- (a) shall, 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
- 5 (b) shall, as far as practicable, avoid doing anything which is likely to impede the lawful conduct of any trade or calling being carried out in or on the premises or place.

(6) A training officer shall, for the purposes of this section, be issued with a certificate of identification that is in or to the effect of the prescribed form.

- 10 (7) A training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

Search warrants

- 15 90. (1) A training officer may apply to an authorised justice 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 justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a training officer named in the warrant—

- (a) to enter the premises or place; and
- 20 (b) to search the premises or place for evidence of a contravention of this Act or the regulations.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

- 25 (4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a member of the police force—

- (a) may accompany a training officer executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the officer in the exercise of the officer's functions under this section.

- 30 (5) In this section—

“authorised justice” means a Magistrate or a justice of the peace employed in the Attorney General's Department.

(6) A training officer who is not a public servant does not have, and may not exercise, the powers conferred by this section.

35 Obstruction etc. of training officers

91. A person shall not assault, delay, obstruct, hinder or impede a training officer in the exercise of the officer's functions under this Act.

Maximum penalty: 10 penalty units.

*Industrial and Commercial Training 1989***False or misleading information**

92. A person shall 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.

5 Maximum penalty: 20 penalty units.

Disclosure of business information

93. (1) A person shall not disclose any business information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- 10 (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
- 15 (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

(2) In this section—

20 “business information” means—

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

Proceedings for offences

94. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before an industrial magistrate or before a Local Court constituted by a Magistrate sitting alone.

30 (2) Proceedings for an offence against this Act or the regulations shall not 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.

35 Applications and notices

95. (1) An application that, pursuant to this Act or the regulations, may be made to the Commissioner or to the Board—

Industrial and Commercial Training 1989

(a) shall be in such form as may be approved for the time being by the Commissioner; and

(b) shall be lodged at, or sent by post to, the offices of the Commissioner.

(2) A notice that the Commissioner is required or permitted to cause to be given 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.

Evidentiary certificates

96. 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 a training officer; or

(b) a specified person was or was not a party to an apprenticeship or traineeship; or

(c) the provisions of a specified apprenticeship or traineeship were or were not in specified terms; or

(d) the provisions of a specified vocational training direction were or were not in specified terms,

is admissible in any proceedings and is evidence of the fact or facts so certified.

20 Publication of certain matters

97. (1) It is sufficient compliance with a requirement of this Act that matter be published in the Gazette if the matter is instead published in the Industrial Gazette.

(2) Evidence of any such matter may be given by the production of a copy of the Gazette, or of the Industrial Gazette, in which the matter has been published.

Liability

98. No matter or thing done by—

(a) the Council or any member of the Council; or

(b) the Commissioner; or

(c) the Board or any member of the Board; or

(d) a training officer; or

(e) any person acting under the direction of the Council, the Board or the Commissioner,

shall, if the matter or thing was done in good faith for the purposes of executing this Act, subject any member of the Council, the Commissioner, any member of the Board, any training officer or any person so acting, personally, to any action, liability, claim or demand.

*Industrial and Commercial Training 1989***Reports**

99. (1) As soon as practicable after 30 June, but no later than 31 December, in each year, the Chairperson of the Council shall prepare and forward to the Minister a report on the work and activities of the Council
5 for the period of 12 months ending on 30 June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving it.

(3) Without limiting the generality of subsection (1), the Chairperson of the Council shall submit to the Minister, at such times and in respect of
10 such periods as the Minister directs, reports on the work and activities of the Council.

(4) A report shall deal with such matters as the Minister directs and with such other matters as the Chairperson of the Council considers appropriate to include in the report.

15 Regulations

100. (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
20 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 terms and conditions of apprenticeships and traineeships; and
- (c) the registration of employers in connection with apprenticeships and traineeships; and
- 25 (d) the proportion of apprentices to skilled tradesmen who may be employed by employers in specified trades; and
- (e) the instruction and practical training to be provided for and undertaken by apprentices and trainees; and
- (f) the supervision of apprentices and trainees by their employers; and
- 30 (g) the facilities to be provided for apprentices and trainees for the purpose of their being trained by their employers; and
- (h) the temporary transfer of apprentices and trainees to the service of alternative employers; and
- 35 (i) the issue, renewal, transfer and cancellation of progress cards in relation to apprentices, the completion of such cards and their return to the Commissioner; and
- (j) the recognition of group training schemes; and
- (k) the keeping of records; and
- (l) the forms to be used for the purposes of this Act; and

Industrial and Commercial Training 1989

(m) any other matter relating to the instruction or practical training of apprentices and trainees by their employers.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

5 Repeals

101. The Apprenticeship Act 1981 and the Commerce and Industry Training Council Act 1985 are repealed.

Savings, transitional and other provisions

102. Schedule 6 has effect.

10 SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL

(Sec. 7)

Definitions

1. In this Schedule—

15 “appointed member” means a member of the Council referred to in section 7 (2) (c), (d) or (e).

Acting members

20 2. (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member and the person, while so acting, has all the functions of the member and shall be taken to be the member.

(2) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

25 (3) A person, while acting in the office of an appointed member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of an appointed member shall be regarded as an absence from office of the member.

Chairperson may appoint alternate

30 3. (1) The Chairperson of the Council may, by instrument in writing, appoint a person to act as his or her alternate.

(2) An alternate appointed under this clause, while so appointed, has all the functions of the Chairperson of the Council and shall be taken to be the Chairperson.

(3) The appointment of an alternate under this clause does not prevent the Chairperson of the Council from exercising the functions of Chairperson.

35 Term of office

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

Industrial and Commercial Training 1989

**SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

Remuneration

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

5 Vacancy in office of member

6. (1) The office of an appointed member becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

10 (d) is removed from office by the Minister; or

(e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or

15 (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

20 (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

25 (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

(3) Without affecting the generality of subclause (2), the Minister may remove from office an appointed member who contravenes clause 8.

30 Filling of vacancy in office of member

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

Disclosure of pecuniary interests

8. (1) An appointed member who has a direct or indirect pecuniary interest—

35 (a) in a matter being considered or about to be considered at a meeting of the Council; or

(b) in a thing being done or about to be done by the Council,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

40 (2) A disclosure by an appointed member at a meeting of the Council that the member—

*Industrial and Commercial Training 1989***SCHEDULE 1—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL—*continued***

- (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- 5 is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body, or to that person, which may arise after the date of the disclosure.
- (3) The Council shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable
- 10 hours to inspection by any person on payment of such fee as may be determined by the Council from time to time.
- (4) After an appointed member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Minister otherwise determines—
- 15 (a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or
- (b) exercise any function under this Act with respect to that thing.
- (5) A contravention of this clause does not invalidate any decision of the Council or the exercise of any function under this Act.
- (6) Nothing in this clause applies to or in respect of an interest of an appointed
- 20 member in a matter or thing that arises merely because—
- (a) the member employs apprentices or trainees; or
- (b) the member—
- (i) is a member, or is in the employment, of a company or other body; or
- (ii) is a partner, or is in the employment, of a person,
- 25 by which or by whom apprentices or trainees are employed.
- (7) A reference in this clause to a meeting of the Council includes a reference to a meeting of a committee of the Council.

Effect of certain other Acts

9. (1) The Public Sector Management Act 1988 does not apply to an appointed
- 30 member and such a member is not, as an appointed member, subject to that Act, Part 8 excepted.
- (2) If, by or under any other Act, provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- 35 (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member of the Council or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- 40 (3) The office of an appointed member of the Council is not, for the purposes of any Act, an office or place of profit under the Crown.

*Industrial and Commercial Training 1989***SCHEDULE 2—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE INDUSTRIAL AND COMMERCIAL TRAINING COUNCIL**

(Sec. 7)

General procedure

- 5 1. (1) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Council.
- (2) The Minister shall call the first meeting of the Council in such manner as the Minister considers appropriate.

10 Quorum

2. The quorum for a meeting of the Council is 7 members, of whom 1 must be the Chairperson of the Council.

Presiding member

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

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

20 Minutes

5. The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD

25

(Sec. 16)

Definitions

1. In this Schedule—
 “appointed member” means a member of the Board referred to in section 16 (2) (c) or (d).

30 Nomination of appointed members

2. An appointed member—
- (a) in the case of a member appointed to represent employers—
- 35 (i) shall be nominated for appointment in the prescribed manner by such employers, or by such associations or industrial unions of employers, as may be prescribed; or
- (ii) if no such nomination is made within a reasonable time after the Minister requests such a nomination to be made, shall be appointed by the Minister without the necessity for nomination; and
- (b) in the case of a member appointed to represent employees—
- 40 (i) shall be nominated in the prescribed manner by such industrial unions of employees as may be prescribed; or

*Industrial and Commercial Training 1989***SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD—*continued***

- (ii) if no such nomination is made within a reasonable time after the Minister requests such a nomination to be made, shall be appointed by the Minister without the necessity for nomination.

Acting members

- 5 3. (1) The Minister may appoint a person to act in the position of an appointed member.

(2) An acting appointed member, while so acting, has all the functions of the member for whom the acting member is acting and shall be taken to be that member.

- 10 (3) A person, while acting in the position of an appointed member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine in respect of the person.

Term of office

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

Remuneration

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

20 Vacancy in office of appointed member

6. (1) An appointed member ceases to hold office—

(a) if the member—

- 25 (i) dies; or
 (ii) completes a term of office and is not re-appointed; or
 (iii) resigns the office by instrument in writing addressed to the Minister; or
 (iv) is removed from office by the Minister; or
 (b) if the person or body by whom the member was nominated for appointment withdraws the nomination in the prescribed manner.

- (2) The Minister may remove an appointed member from office at any time.

30 Filling of vacancies

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

SCHEDULE 4—PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE VOCATIONAL TRAINING BOARD

35

(Sec. 16)

Convening meetings

1. A meeting of the Board shall be convened by the Commissioner—
 (a) whenever he or she thinks fit; or

*Industrial and Commercial Training 1989***SCHEDULE 3—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE VOCATIONAL TRAINING BOARD—*continued***

- (b) within 5 days of receipt of a written request signed by any 2 other members of the Board.

Rules for conduct of business

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

Quorum

3. The quorum for a meeting of the Board is 2 members, of whom 1 must be the Commissioner.

Procedure and decisions of the Board

4. (1) The Chairperson of the Board shall preside at a meeting of the Board.
 (2) A member of the Board referred to in section 16 (2) (b) is not entitled to vote at any meeting of the Board, but is entitled to be heard on any matter that is before the Board.
 (3) The Chairperson of the Board has a deliberative vote at any meeting of the Board and, in the event of an equality of votes, has a second or casting vote.

Chairperson may act as Board when other members are absent etc.

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

Schedule not to apply to proceedings under Part 4

6. This Schedule does not apply to the procedure of the Board in the exercise of its functions under Part 4.

SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE APPEAL PANEL

(Sec. 85)

Definitions

1. In this Schedule—

“appointed member” means a member of the Appeal Panel referred to in section 85 (2) (b) or (c).

Industrial and Commercial Training 1989

**SCHEDULE 5—PROVISIONS WITH RESPECT TO THE MEMBERS OF THE
APPEAL PANEL—*continued***

Term of office

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

5 Remuneration

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

Vacancy in office of member

10 4. (1) The office of an appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Secretary; or
- (d) is removed from office by the Minister; or

15 (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

20 (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

25 (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time on the grounds of incompetence, incapacity or misbehaviour.

Filling of vacancy in office of member

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

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 102)

Part 1—Preliminary

Regulations

35 1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

Industrial Arbitration (Industrial and Commercial Training) Amendment Act 1989

Miscellaneous Acts (Industrial and Commercial Training) Amendment Act 1989.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to this Act 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—

- 5 (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
- 10 (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 the enactment of the Industrial and Commercial Training Act 1989

Definitions

2. (1) In this Part—

15 “the 1981 Act” means the Apprenticeship Act 1981;

“the 1985 Act” means the Commerce and Industry Training Council Act 1985.

(2) The provisions of a regulation referred to in clause 1 shall, to the extent to which they consist of provisions of a savings or transitional nature consequent on the enactment of the Industrial and Commercial Training Act 1989, be taken to be included within
20 this Part.

Pending proceedings etc.

3. (1) Any proceedings that were pending before—

- (a) an apprenticeship training committee; or
- (b) the Industrial Commission; or
- 25 (c) an industrial magistrate,

before the commencement of this clause may be continued and completed, and any order may be made in those proceedings and shall (subject to this Part) be given effect to, as if this Act had not been enacted.

(2) The provisions of this Part apply to and in respect of any order made, or anything
30 done, by—

- (a) an apprenticeship training committee; or
- (b) the Industrial Commission; or
- (c) an industrial magistrate,

in any such proceedings as if the order had been made, or the thing done, immediately
35 before the commencement of this clause.

Pending appeals

4. (1) For the purposes of any appeal proceedings, the decision of an apprenticeship training committee under the 1981 Act shall be taken to be a decision of the Board.

(2) This clause does not apply to any appeal proceedings that were pending before
40 the Industrial Commission before the commencement of this clause.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Abolition of Councils

5. (1) The New South Wales Apprenticeship Council and the Commerce and Industry Training Council of New South Wales are abolished.

(2) A reference in any Act or statutory instrument, or in any other document, to—

5 (a) the New South Wales Apprenticeship Council; or

(b) the Commerce and Industry Training Council of New South Wales,

shall, on and from the commencement of this clause, be read as a reference to the Council constituted by section 7.

Apprenticeship training committees

10 6. (1) On the commencement of this clause—

(a) each apprenticeship training committee established under the 1981 Act is dissolved; and

(b) each member of any such committee shall become a member of the Board.

15 (2) A person who becomes a member of the Board pursuant to this clause shall, subject to this Act, hold office as such for 3 years from the commencement of this clause.

Apprenticeship supervisors

7. (1) A person who was an apprenticeship supervisor under the 1981 Act immediately before the commencement of this clause shall be taken to be a training officer under this Act.

20 (2) A reference in any Act or statutory instrument, or in any other document, to an apprenticeship supervisor shall, on and from the commencement of this clause, be read as a reference to a training officer.

Apprenticeships

25 8. An apprenticeship in force immediately before the commencement of this clause under Division 2 or 3 of Part 4 of the 1981 Act shall be taken to be an indentured apprenticeship or trainee apprenticeship, as the case may be, established under this Act.

Certificates

30 9. A certificate issued under section 28 or 29 of the 1981 Act before the commencement of this clause, or issued under that section as a consequence of the operation of clause 3, shall be taken to be a craft certificate issued under section 43 of this Act.

Defence Force determinations

10. On and from the commencement of this clause—

35 (a) a determination under section 35 of the 1981 Act shall be taken to be a determination under section 81 of this Act; and

(b) an instrument filed under section 35 of the 1981 Act shall be taken to be an instrument filed under section 81 of this Act; and

(c) a certificate issued under section 35 of the 1981 Act shall be taken to be a craft certificate issued under section 81 of this Act.

Industrial and Commercial Training 1989

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Regulations**

11. On and from the commencement of this clause, all regulations under the 1981 Act and the 1985 Act are repealed.

Evidence

- 5 12. Evidence of any order, decision, ruling or determination made under the authority of the 1981 Act may, on and from the commencement of this clause, be given by the production of a copy thereof duly certified by the Commissioner.

Construction of references to repealed Acts

- 10 13. A reference in any Act or statutory instrument, or in any other document, to the 1981 Act or to the 1985 Act shall, on and from the date of assent to this Act, be read as including a reference to this Act.

The Director of Apprenticeship

- 15 14. A reference in any Act or statutory instrument, or in any other document, to the Director of Apprenticeship shall, on and from the commencement of this clause, be read as a reference to the Commissioner.
-