

**Submission
No 65**

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

Organisation: Vocational Training Tribunal, NSW Department of Education
and Training

Date received: 30/11/2011



The Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000
lawandjustice@parliament.nsw.gov.au

Dear Sir/Madam

I refer to your correspondence dated 27 October 2011, inviting submissions concerning the *Inquiry into opportunities to consolidate tribunal's in NSW*.

Please find the enclosed comments in relation to the Vocational Training Tribunal, and its functions in dealing with matters within the framework of the *Apprenticeship and Traineeship Act 2001* under the administration of the NSW Department of Education and Communities.

Yours sincerely

Phillip Moore
Commissioner for Vocational Training
30 Nov 2011

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

The following comments are provided from the NSW Department of Education and Communities, in response to the consultation paper.

The Apprenticeship and Traineeship Directorate of the NSW Department of Education and Communities is responsible for the:

- Administration of the Training Contract between individuals and their employer undertaking training in 1,024 apprenticeship and traineeship vocations in 21 different industry sectors,
- The recognition of trade skills for individuals who have developed their skills outside a formal apprenticeship training program.

THE VOCATIONAL TRAINING TRIBUNAL - ROLES AND RESPONSIBILITIES

The Vocational Training Tribunal (VTT) and the Vocational Training Appeal Panel (VTAP) are tri-partite bodies, established under the *Apprenticeship and Traineeship Act 2001*. Sections 59 and 62, respectively, provide for the establishment of the VTT and the VTAP.

The VTT exercises a range of functions under the Act relating to the approval and regulatory requirements of apprenticeships and traineeships, the recognition of trade skills and dispute resolution between employers and apprentices and trainees.

Administration of Apprenticeships and Traineeships

The *Apprenticeship and Traineeship Act 2001* provides for the referral of administrative matters to the Vocational Training Tribunal, where the Tribunal's expertise and authority is considered necessary to determine the suitability of individual apprenticeship/traineeship arrangements. It provides individual employers and apprentices/trainees increased flexibility options, should they be required within the regulatory framework of the Act.

This may include:

- Approvals of apprenticeships and traineeships applications referred to the Tribunal by the Commissioner for Vocational Training or delegate, where there is uncertainty concerning the appropriateness or suitability of the arrangement.
- The issue of a Vocational Training Direction, where the parties to an apprenticeship or traineeship are seeking an alternative term or alternative training arrangements and the suitability of this needs examination.
- The variation of apprenticeship and traineeship training plans;
- The variation of apprenticeship and traineeship training contracts;
- The suspension of apprenticeships and traineeships.

Recognition of other trade qualifications

Trade recognition processes operate in States and territories of Australia to service the needs of skilled migrants and individuals who have developed their trade skills outside a formal apprenticeship.

Persons seeking to have trade skills and experience developed outside a formal apprenticeship recognized, apply to the Vocational Training Tribunal for an assessment.

In recent years, skills shortages, particularly trade skill shortages, have impacted on governments and industry alike, notwithstanding the global economic downturn. NSW Department of Education and Communities sees the recognition of prior learning and the provision of trade skills recognition services as an important mechanism for the validation of valuable experiential learning and many years of industry experience in trade occupations. This initiative benefits:

- Individuals with increased opportunities to employment and/or further training that may lead to a national trade qualification,
- The New South Wales labor market and industry by providing some certainty regarding the skills and knowledge of individuals who have been granted trade skills recognition by the Vocational Training Tribunal.

Between 2006 and 2010 nearly 8,000 people applied for trade skills recognition through the Vocational Training Tribunal. Applications are considered by 13 different industry specific panels over 143 meetings scheduled over a given year.

The Vocational Training Tribunal relies on the industry/occupational knowledge of its members to enable effective assessments in:

- 133 different trade vocations;
- 13 Industry sectors.

Proceedings with respect to disputes and disciplinary matters.

Between 2006 and 2010 the Vocational Training Tribunal convened 260 hearings to determine disputes and disciplinary matters.

Hearings are convened in Sydney, in cases where the parties concerned, are based in the Sydney metropolitan area or in regional New South Wales, in cases where the parties concerned are outside the Sydney metropolitan area.

Part 4 of the *Apprenticeship and Traineeship Act 2001* provides for complaints to be referred to the Vocational Training Tribunal concerning:

- A party to an apprenticeship or traineeship failing to discharge their obligations under a apprenticeship/traineeship training contract and/or training plan, lodged by the other party to an apprenticeship or traineeship.
- A party to an apprenticeship or traineeship failing to consent to the transfer, cancellation or variation of an apprenticeship or traineeship, lodged by the other party to an apprenticeship or traineeship.
- An Industry Training Officer, appointed under the *Apprenticeship and Traineeship Act 2001*, against a party to an apprenticeship or traineeship for failing to discharge their obligations under an apprenticeship/traineeship, or failing to comply with any requirements of the *Apprenticeship and Traineeship Act 2001*.

Parties to an apprenticeship or traineeship do not have immediate recourse to the Vocational Training Tribunal to settle a dispute/complaint, through a direct application. Instead the process for dealing with complaints is to lodge a written complaint to the Commissioner for Vocational Training or delegated officers.

Complaints can be lodged at any of the 9 State Training Services Offices located around New South Wales. This services the needs of persons in metropolitan and regional areas of New South Wales equitably.

In cases where a complaint has been made by a party to an apprenticeship or traineeship, section 40 of the *Apprenticeship and Traineeship Act 2001*, requires the Commissioner for Vocational Training to attempt to bring the parties to a settlement. The Commissioner has delegated Industry Training Officers located around New South Wales to undertake this role.

Matters are referred to the Vocational Training Tribunal only in cases where the parties could not reach a settlement acceptable to each of them.

This approach in dealing with disputes/complaints is an escalation model that is supported with other provisions of the *Apprenticeship and Traineeship Act 2001*, designed to support and facilitate quality training outcomes and the completion of apprenticeship and traineeship training, such as:

- The obligation for employers to notify within 14 days of any matters that may jeopardise or affect the apprenticeship/traineeship, this provides enhanced opportunity to apply remedies or early pro active intervention strategies;
- A training plan relating to the training to be undertaken.
- Obligations to provide and undertake work-based training in relation to the apprenticeship or traineeship vocation concerned.
- Obligations for participants in apprenticeships/traineeship to follow lawful instruction and undertake training assessment and learn.

The provision for early intervention and encouraging liaison Industry Training Officers, who or involved in the administration of the *Apprenticeship and Traineeship Act 2001* and where necessary escalation to the Vocational Training Tribunal with expertise in training matters:

- Assists in the mitigation or reoccurrence of complaints/disputes concerning apprenticeship and traineeship training matters, through the Tribunal's ability to provide advice, options and direction.
- Assists in the improvement of apprenticeship and traineeship training outcomes through effective examination or application of options to facilitate the best training outcome.
- Increases retention and completion apprenticeship and traineeship rates.

The total number of apprentices and trainees in training and the number of Vocational Training Tribunal hearings are compared the following table over five (5) years.

Calendar Year	Total in training	VTT Hearings
2006	138,885	43
2007	146,431	48
2008	155,543	51
2009	153,940	75
2010	162,966	43

The table above indicates there has been a consistent increase in the number of apprentices and trainees participating in employment and training over the last five (5) years. Nevertheless, the number of complaints/disputes being referred to the Vocational Training Tribunal is maintained at relatively low and stable numbers by comparison

Vocational Training Tribunal hearings

a) Procedures

The Vocational Training Tribunal does not levy any costs on a party concerning a hearing. The *Apprenticeship and Traineeship Act 2001* also sets out the following requirements for the conduct of *Vocational Training Tribunal* hearings:

- The Tribunal must fix a time and place for the hearing of the complaint and must send a notice to each of the parties.
- The Tribunal is not bound by the rules of law governing the admission of evidence but may inform itself on any matter in such manner as it thinks fit.
- A hearing must be conducted with as little formality and legal technicality as the circumstances of the case permit.
- A hearing must be conducted in the absence of the public.
- The Tribunal may from time to time adjourn a hearing to such time, date and place and for such reasons as it considers fit.
- Parties meet their own costs in relation to a hearing.
- The presiding member of the Tribunal may require a person who attends a hearing to answer any question that is reasonably related to the hearing.

- The Tribunal can call witnesses or request documents to be produced concerning a hearing.
- The Tribunal must attempt to conciliate a settlement acceptable to each of the parties, prior to determining the matter.
- The Tribunal is limited to requirements set out in Sections 51, 52 and 53 of the *Apprenticeship and Traineeship Act 2001*, when making determinations.

b) Legal representation at Vocational Training Tribunal hearings

A party to a hearing at the Vocational Training Tribunal does not have a guaranteed entitlement to representation from a legal practitioner.

Parties are afforded a right to representation from a legal practitioner in the following circumstances:

- With the consent of the Tribunal and each of the other parties to the hearing.
- In cases where a party to the hearing is the Crown;
- In cases where a party to the hearing is a corporation or an industrial organization.

A party to a hearing at the Vocational Training Tribunal does have an entitlement to representation from an industrial organization.

Vocational Training Tribunal Membership and Constitution

Members of the Vocational Training Tribunal are nominated on the basis of their experience in industry based vocational education and training particularly relating to apprenticeship and traineeship based training.

Section 59 of the *Apprenticeship and Traineeship Act 2001* provides for the establishment and constitution of the *Vocational Training Tribunal*, in particular:

59 Establishment of Tribunal

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

In relation to the above:

- *Commissioner*, is the Commissioner for Vocational Training, as defined in the *Apprenticeship and Traineeship Act 2001*.
- All *Registered Training Organisations* that provide training in relation to a recognised trade vocation or a recognised traineeship vocation can nominate a representative to the *Vocational Training Tribunal*.

- All industrial organisations of *employers* that are parties to an industrial award or agreement relating to the employment of apprentices or trainees can nominate a representative to the *Vocational Training Tribunal*.
- All industrial organisations of *employees* that are parties to an industrial award or agreement relating to the employment of apprentices or trainees can nominate a representative to the *Vocational Training Tribunal*.

The prescribed manner of nominating candidates pursuant to the *Apprenticeship and Traineeship Act 2001* is for respective organisations to nominate a suitable person to the Director-General of the Department of Education and Communities.

Vocational Training Tribunal members are appointed for such a period as set out in the instrument of appointment, usually five years. A member may be re-appointed, if otherwise qualified.

Remuneration

Vocational Training Tribunal members have traditionally performed their functions as members without remuneration.

They are however reimbursed for any out of pocket expenses relating to travel and accommodation arising from attendance at hearings.

Members are from time to time required to undertake regional travel within New South Wales. Accommodation and/or vehicle mileage rates set out in the Crown (Employees Travelling Compensation) Award are used to determine the payment of out of pocket expenses made to Vocational Training Tribunal members participating in hearings undertaken outside Sydney.

The Vocational Training Appeal Panel

The Vocational Training Appeal Panel is established under the *Apprenticeship and Traineeship Act 2001* to review, on request, decisions and determinations that are made by the Commissioner (or delegate) or by the Vocational Training Tribunal.

An appeal to the Vocational Training Appeal Panel may be made, in accordance with the regulations, from any of the following:

- any decision by the Tribunal or by the Commissioner dismissing an application for:
 - establishment of an apprenticeship or traineeship
 - approval to the transfer of an apprenticeship or traineeship
 - variation of an apprenticeship or traineeship
- any vocational training direction made by the Tribunal or by the Commissioner
- any decision by the Tribunal or by the Commissioner under which an apprenticeship or traineeship has been varied
- any decision by the Commissioner to refuse to:
 - register a person as an existing worker trainee
 - register a person or body as a group training organisation or to suspend or cancel the registration of a person or body as a group training organisation

- to issue a certificate of proficiency, craft certificate or certificate of completion under Part 2 or 3
- refer a complaint under Part 4 for determination by the Tribunal
- any determination by the Tribunal:
 - under section 36 that denies recognition of a person's qualifications or experience in a particular recognised trade vocation
 - in respect of a complaint under Part 4, including any order of the kind referred to in section 53.

An appeal is dealt with through a new hearing. If applicable, the appeal takes into account any fresh evidence or information which may be tendered by the appellant, since the Vocational Training Tribunal Hearing.

The *Apprenticeship and Traineeship Act 2001* provides that nominated persons may be members of both the Vocational Training Tribunal and Vocational Training Appeal Panel. However, pursuant to section 63 of the Act, a member may not sit on the Vocational Training Appeal Panel where such member constituted the Vocational Training Tribunal for the decision or determination under appeal.