Queensland



VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 1991

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Queensland



Vocational Education, Training and Employment Act 1991

Act No. 43 of 1991

An Act to provide for vocational education, training and employment and related purposes

[Assented to 5 August 1991]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

1.1 This Act may be cited as the *Vocational Education, Training and Employment Act 1991*.

Commencement

- **1.2(1)** Section 1.1 and this section commence on the day this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day to be appointed by proclamation.

Objects

- 1.3 The objects of this Act are—
 - (a) to establish effective and efficient mechanisms for the provision of vocational education, training and employment services responsive to the needs of industry and the community; and
 - (b) to provide mechanisms by which employers, unions and the community can advise government on vocational education and training needs and priorities to meet those needs; and
 - (c) to provide mechanisms for consultation between the Commission and providers of vocational education and other bodies involved in vocational education; and
 - (d) to provide for a system of accreditation of vocational education and training courses to ensure the quality of those courses; and
 - (e) to facilitate the development of training by and within industry; and

- (f) to promote cross-crediting and articulation of courses between providers of vocational education and training and other sectors of education so as to maximise progression of students; and
- (g) to regulate training including apprenticeship, traineeship and other training systems; and
- (h) to promote the creation of employment services within the State.

Interpretation

1.4 In this Act—

"accredit" means recognise as meeting certain criteria;

- "accredited course" means any course or subject of a course that has been accredited by the Commission;
- "apprentice" means a person registered as an apprentice under this Act whether or not the person is indentured;
- "apprenticeship calling" means a trade declared—
 - (a) by order in council made according to law before the commencement of section 3.8; or
 - (b) by determination of the State Training Council made after the commencement of section 3.8:

to be an apprenticeship calling;

"authorised person" means—

- (a) an industrial organisation; or
- (b) an organisation or body with an interest in an apprenticeship calling or training scheme; or
- (c) the State Training Council;
- "award or industrial agreement" means an award or industrial agreement made or registered under—
 - (a) the Industrial Relations Act 1990; or
 - (b) the *Industrial Relations Act 1988* of the Commonwealth;

- "commencement of this Act" means the day appointed by proclamation under section 1.2(2) for commencement of the provisions of this Act;
- "Commission" means the Vocational Education, Training and Employment Commission;
- "Commissioner for Training" means the chairperson for the time being of the State Training Council;
- "Corporation" means the Vocational Education, Training and Employment Corporation;
- "director", in relation to a State college, means the person in charge of the college;
- "Director-General" means the chief executive of the department;
- "eligible apprentice" means an apprentice who, within the meaning of any relevant award or industrial agreement, is an eligible employee for the purposes of entitlement to occupational superannuation benefits;
- "eligible trainee" means a trainee who, within the meaning of any relevant award or industrial agreement, is an eligible employee for the purposes of entitlement to occupational superannuation benefits;
- **"employer"** means an employer within the meaning of the *Industrial Relations Act 1990*, and includes an industrial organization and a group training scheme;
- **"group training scheme"** means an industrial organisation or a body corporate that is approved by the State Training Council to employ apprentices or trainees but which uses the facilities of its members or other employers to train those apprentices or trainees;
- "guardian" means a parent or guardian, and includes, in a case where a person has no parent or guardian resident in Queensland capable of acting and willing to act, a person approved by the State Training Council;
- "indenture" means a contract of training that binds an apprentice to an employer and is made under, or continued in force by, this Act, and includes such a contract as varied for the time being by the State Training Council;
- "industrial organisation" means a body or association of persons—

- registered under the *Industrial Relations Act 1990* as an industrial organization; or
- registered under the *Industrial Relations Act 1988* of the Commonwealth;
- "occupation" means any trade, apprenticeship calling, vocation or craft;
- "pre-apprenticeship course" means a course of instruction that—
 - (a) is approved by the State Training Council in an apprenticeship calling; and
 - (b) is undertaken before entry into apprenticeship in that apprenticeship calling;

"premises" means—

- (a) land; or
- (b) a building, structure or erection of any kind, whether wholly or partly constructed or erected or in the course of construction or erection; or
- (c) a part of a building, structure or erection; or
- (d) any aircraft, vehicle or vessel;
- **"premium"** means money, goods or service paid or provided, or action done, as an inducement or a reward or gift;

"pre-vocational course" means a course of instruction that—

- (a) is approved by the State Training Council in more than one apprenticeship calling; and
- (b) is undertaken before entry into apprenticeship in any of those apprenticeship callings;
- **"probationary period"** includes any prescribed period of extension of a probationary period;
- **"probationer"** means an apprentice or trainee who under this Act is employed on probation;
- **"ratification"** means confirmation of a college, person, institution or body having met criteria, as specified by the Commission or the

Accreditation Council, for the authorised conduct of an accredited vocational education and training course;

"repealed Act" includes—

- (a) the Employment, Vocational Education and Training Act 1988; and
- (b) that Act as amended by the *Employment, Vocational Education* and *Training Act Amendment Act 1988*; and
- (c) that Act as further amended by the *Public Service (Administrative Arrangements) Act 1990*;
- "senior secondary education" means education offered in years 11 and 12;

"State college" means—

- (a) any State college or other means of technical and further education; and
- (b) any State senior college continued or established under this Act;
- **"State Training Council"** means the State Training Council constituted under this Act;
- "student" means a person enrolled in a State college;
- **"technical and further education"** means tertiary education other than advanced education or university education;
- "tertiary education" means education, other than primary or secondary education, offered wholly or primarily to students who have completed their primary and secondary education or who are above the age of compulsory attendance at school;
- "trainee" means a person registered as a trainee under this Act (whether or not a training agreement has been entered into);
- "training agreement" means an agreement of training which binds a trainee to an employer made under, or continued in force under this Act and as varied for the time being by the State Training Council;
- "training consultant" means the Commissioner for Training and any other person appointed in accordance with this Act as a training

consultant;

- "vocational education" means education having a vocational outcome and encompassing technical and further education including courses run by State colleges;
- "vocational education and training establishment" means any institution established for private or commercial purposes providing or offering a vocational education course, other than a State college;
- "welfare consultant" means the Commissioner for Training and any other person appointed in accordance with this Act as a welfare consultant.

Adoption of meanings of expressions in Industrial Relations Act

1.5 An expression defined in the *Industrial Relations Act 1990*, when used in this Act, has the meaning assigned it by that Act.

PART 2—ADMINISTRATION

Division 1—Vocational Education, Training and Employment Commission

Constitution of Commission

- **2.1(1)** There is to be a body called the Vocational Education, Training and Employment Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and is capable in law of—
 - (a) suing and being sued; and
 - (b) compounding or proving in any court of competent jurisdiction all debts or sums of money due to it; and
 - (c) accepting gifts, grants, bequests or devises and creating and administering trust funds; and

- (d) doing and suffering all such other actions and things as bodies corporate may in law do and suffer.
- (3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the common seal of the Commission affixed to a document and must presume that it was duly affixed until the contrary is proved.

Membership of Commission

- **2.2(1)** The Commission consists of—
 - (a) 3 persons having standing as employers, one of whom has standing in the rural industry; and
 - (b) 3 persons having standing with industrial organisations of employees; and
 - (c) 3 persons having standing in the community, of whom—
 - (i) one is drawn from the area of higher education; and
 - (ii) another is drawn from the area of general education and nominated by the Minister for Education; and
 - (d) the general manager for the time being of the Commission who is a member *ex officio*; and
 - (e) a nominee of the Commonwealth Minister responsible for vocational education and training.
- (2) The members of the Commission, other than the member *exofficio*, are to be appointed by the Governor in Council by Industrial Gazette notice.
- (3) On appointment of the whole number of members of the Commission, other than the member *ex officio*, and, from time to time, in the event of a vacancy in the office of chairperson or deputy chairperson of the Commission, the Governor in Council is to designate a member of the Commission to be chairperson and, as the case may require, another member of the Commission to be deputy chairperson.

Commission subject to direction of the Minister

- **2.3(1)** In respect of matters of policy and in exercise of its powers, and performance of its functions, under this Act, the Commission is subject to directions given to it in writing by the Minister and is to comply with such directions.
- (2) Directions given by the Minister in a financial year must be disclosed in the annual report furnished under section 2.4(m) in relation to that financial year.

Functions of Commission

2.4 The functions of the Commission are—

- (a) to advise the Minister on the development of frameworks for the State's vocational education, training and employment services, which will ensure high quality services from both the public and private sectors; and
- (b) to advise the Minister on vocational education, training and employment strategies, which will complement State economic and social development; and
- (c) to determine policy relating to regulated training including apprenticeship, traineeship and other training systems; and
- (d) to determine policy relating to accreditation and ratification; and
- (e) to identify major vocational education, training and employment services issues and make recommendations to the Minister on policy directions; and
- (f) to ensure consistency in the nomenclature of awards granted to persons who have successfully completed vocational education and training; and
- (g) to confer with and, where it is considered necessary or desirable, extend recognition to other bodies within or outside the State on matters relating to vocational education, training and employment services; and
- (h) to undertake research in relation to the vocational education,

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training and employment system; and

- (i) to advise the Minister on curriculum policy formulation in relation to the vocational education and training system; and
- (j) to advise the Minister on capital work planning in relation to the vocational education and training system; and
- (k) to recognise vocational education and training establishments as approved training organisations; and
- (l) to advise the Minister on the most effective application of appropriation approved by Parliament for the purpose of vocational education, training and employment services; and
- (m) to furnish to the Minister as soon as practicable after the end of each financial year a report of its work and activities and those of its standing committees during that financial year; and
- (n) to advise the Minister on such other matters as the Minister may refer to it.

Powers of Commission

2.5 The powers of the Commission are—

- (a) to engage a person (other than a member or employee of the Commission) or a body of persons to conduct on the Commission's behalf any of its operations; and
- (b) to engage persons to advise it in respect of matters of an educational, administrative or technical nature; and
- (c) to produce and sell vocational education and training materials and services and to enter into an agreement with any person for those purposes; and
- (d) to exploit commercially any resources of the Commission including any study, research or knowledge, or the practical application of any study, research or knowledge, developed by or within the Commission or belonging (whether alone or jointly with any other person or body) to the Commission; and
- (e) to make determinations and orders on all matters concerning

recognition of vocational education and training establishments or categories of such training establishments as approved training organisations; and

- (f) to appoint such standing committees and subcommittees as it considers necessary to assist in the performance of its functions; and
- (g) to issue directions to members of a standing committee on matters of policy, the exercise of their respective powers and performance of their respective functions; and
- (h) to recognise and establish such industry advisory bodies as it considers necessary; and
- (i) to make rules as prescribed.

Chairperson may sign agreements for Commission

2.6 The chairperson of the Commission is empowered to sign agreements for and on behalf of the Commission, if the Commission has passed a resolution to enter into the agreement.

Commission's rules

- **2.7(1)** The Commission, with the approval of the Minister, may make rules not inconsistent with this Act with respect to—
 - (a) course accreditation or ratification, and fees (if any) charged in relation to course accreditation or ratification; and
 - (b) recognition of vocational education and training establishments and fees (if any) charged in relation to such recognition; and
 - (c) standing committees and subcommittees appointed under section 2.5.
- (2) Section 28A of the *Acts Interpretation Act 1954* (tabling of regulations) applies to rules made by the Commission as if they were regulations.
- (3) All fees payable under rules made under subsection (1) are to be paid to and are the property of the Corporation.

Recognition of industry training advisory bodies

- **2.8(1)** The industry training advisory bodies are the principal source of advice to the Commission in relation to matters concerning vocational education and training.
- (2) The Commission may recognise and seek advice from such other bodies or persons in relation to matters concerning vocational education and training as it thinks fit.

Division 2—Standing committees of Commission

Constitution of State Training Council

- **2.9(1)** There is to be constituted as a standing committee of the Commission a State Training Council consisting of—
 - (a) a member of the Commission nominated by the Minister, who is the chairperson of the council; and
 - (b) 4 persons representing employers, of whom—
 - (i) one at least is a member of an industry training advisory body; and
 - (ii) another is an executive member of an industrial organisation of employers; and
 - (iii) another is a person experienced in enterprise based training; and
 - (c) 4 persons representing employees, of whom one at least is an executive member of an industry training advisory body; and
 - (d) a person representing non-government vocational education and training; and
 - (e) 2 officers of the department nominated by the Director-General, of whom one is a director; and
 - (f) a nominee of the Commonwealth Minister responsible for vocational education and training.
 - (2) The members of the State Training Council are to be appointed by the

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Commission by Industrial Gazette notice.

(3) The members of the State Training Council are to appoint from their number a deputy chairperson for a period, not exceeding the term of appointment of the appointee to the council, determined by the members and the appointee is the deputy chairperson of the council.

Functions and powers of State Training Council

- **2.10(1)** The functions and powers of the State Training Council are—
 - (a) to advise the Commission on policy matters with respect to apprenticeship and traineeship training, other training systems and such other matters as the Commission may refer to it; and
 - (b) to determine the apprenticeship callings and occupations to which this Act should be applied; and
 - (c) to make determinations and orders on all matters concerning apprentices and apprenticeships, trainees and traineeships and other persons and their training arrangements as authorised by or under this Act; and
 - (d) to determine the entitlements to and, where appropriate, arrange the issue of certificates indicating the training undertaken and the qualifications of persons—
 - (i) who complete courses of training approved by the State Training Council; or
 - (ii) who satisfy the State Training Council, in such other manner as the State Training Council accepts, as to their entitlement to any such certificates; and
 - (e) to administer indentures and training agreements; and
 - (f) to appoint such subcommittees as it considers necessary to assist in the performance of its functions; and
 - (g) to undertake such other activities as the Commission may refer to it; and
 - (h) to furnish to the Commission such reports on its work and activities as are required by the Commission.

(2) The State Training Council has such powers as are incident to the proper performance by it of any of its functions under this Act.

Constitution of State Planning and Development Council

- **2.11(1)** There is to be constituted as a standing committee of the Commission a State Planning and Development Council consisting of—
 - (a) a member of the Commission, nominated by the Minister, who is the chairperson of the council; and
 - (b) 2 persons representing industry training advisory bodies; and
 - (c) 2 persons representing industry or commerce; and
 - (d) 2 persons representing industrial organisations of employees; and
 - (e) a person representing non-government vocational education and training; and
 - (f) 2 officers of the department, nominated by the Director-General, of whom one is a director; and
 - (g) a nominee of the Minister charged with the administration of the *Education (General Provisions) Act 1989*; and
 - (h) a nominee of the Minister charged with the administration of the *Industrial Development Act 1963*; and
 - (i) a nominee of the Commonwealth Minister responsible for vocational education and training.
- (2) The members of the State Planning and Development Council are to be appointed by the Commission by Industrial Gazette notice.
- (3) The members of the State Planning and Development Council are to appoint from their number a deputy chairperson for a period, not exceeding the term of appointment of the appointee to the council, determined by the members and the appointee is the deputy chairperson of the council.

Functions and powers of State Planning and Development Council

- **2.12(1)** The functions and powers of the State Planning and Development Council are—
 - (a) to advise the Commission regarding short and long term plans to meet vocational education and training needs of the State; and
 - (b) to advise the Commission on priorities regarding the application of public sector funds to meet vocational education, training and employment service needs of the State; and
 - (c) to co-ordinate information and advice obtained from various industry bodies; and
 - (d) to work with industry bodies recognised by the Commission to establish mechanisms for determining priorities for vocational education and training needs; and
 - (e) to assess information on long term needs and immediate priorities in any industry and to advise the Commission accordingly; and
 - (f) to advise the Commission regarding the development of both public and private sector delivery of vocational education, training and employment services; and
 - (g) to undertake such other activities as the Commission may refer to it; and
 - (h) to furnish to the Commission such reports on its work and activities as are required by the Commission.
- (2) The State Planning and Development Council has such powers as are incident to the proper performance by it of any of its functions under this Act.

Constitution of Accreditation Council

- **2.13(1)** There is to be constituted as a standing committee of the Commission an Accreditation Council consisting of—
 - (a) a member of the Commission nominated by the Minister, who is the chairperson of the council; and

- (b) the Commissioner for Training; and
- (c) a person drawn from the area of higher education; and
- (d) a person drawn from the area of senior secondary education nominated by the Minister for Education; and
- (e) 2 persons representing industrial organisations of employers; and
- (f) 2 persons representing industrial organisations of employees; and
- (g) a person representing non-government provided vocational education and training; and
- (h) a person representing government provided vocational education and training; and
- (i) a nominee of the Commonwealth Minister responsible for vocational education and training.
- (2) The members of the Accreditation Council are to be appointed by the Commission by Industrial Gazette notice.
- (3) The members of the Accreditation Council are to appoint from their number a deputy chairperson for a period, not exceeding the term of appointment of the appointee to the council, determined by the members and the appointee is the deputy chairperson of the council.

Functions and powers of Accreditation Council

- **2.14(1)** The functions and powers of the Accreditation Council are—
 - (a) to make determinations and orders on all matters concerning—
 - accreditation; and
 - ratification of arrangements for provision;

of vocational education and training courses conducted by State colleges, or any other person, institution or body that applies for accreditation or ratification; and

- (b) to review accredited vocational education and training courses to ensure maintenance of standards and portability of credentials; and
- (c) to administer a system of vocational education and training

awards, namely, certificates, advanced certificates, associate diplomas, diplomas and other such awards approved by the Commission; and

- (d) to liaise with other accrediting and course registration bodies, providers of secondary and higher education, and with persons conducting non-government vocational education and training establishments, on matters concerning accreditation; and
- (e) to appoint such subcommittees as it considers necessary to assist in the performance of its functions; and
- (f) to undertake such other activities as the Commission may refer to it: and
- (g) to furnish to the Commission such reports on its work and activities as are required by the Commission.
- (2) The Accreditation Council has such powers as are incident to the proper performance by it of any of its functions under this Act.

Appointment of advisory committees

2.15 The Minister may establish committees to advise the Minister on any aspect of vocational education, training or employment.

Division 3—General provisions relating to Commission and standing committees

Time for constitution of Commission or standing committees

- **2.16(1)** The Governor in Council, by Industrial Gazette notice, is to appoint a day on or before which the Commission is to be first constituted under this Act.
- (2) The Commission must be constituted in the manner prescribed on or before the date appointed under subsection (1).
- (3) The Commission, by Industrial Gazette notice, is to appoint a day on or before which any standing committee is to be constituted by the Commission.

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(4) The Commission and each standing committee of the Commission is to be taken as duly constituted on the first appointment in the manner prescribed of the whole number of members of the Commission, other than the member *ex officio*, or, as the case may be, of the standing committee.

Term of appointment

- **2.17(1)** Appointment of a member of the Commission or a standing committee is for a term of 3 years but if, by the expiry of that term, a successor has not been duly appointed the member continues in office, subject to this Act, for a period of 6 months or until a successor is duly appointed, whichever period is less.
- (2) The Governor in Council may at any time remove an appointed member of the Commission from office, by Industrial Gazette notice.
- (3) The Commission may at any time remove a member of a standing committee from office by Industrial Gazette notice.
- (4) On publication of the Industrial Gazette notice, the person so removed ceases to be a member of the Commission or standing committee, as the case may be.

Vacancy in membership

- **2.18(1)** A vacancy occurs in the office of an appointed member of the Commission or a standing committee if the member—
 - (a) dies; or
 - (b) resigns by signed writing delivered to the prescribed person; or
 - (c) is absent, without leave of the Commission or standing committee, as the case may be, first obtained and without reasonable excuse, from 3 consecutive ordinary meetings of the Commission or standing committee of which meetings notice has been given to the member; or
 - (d) ceases to be qualified as an appointed member of the Commission or standing committee, as the case may be; or
 - (e) is removed from office under section 2.17(2) or (3).

(2) In subsection (1)—

"prescribed person" means—

- (a) in the case of resignation of the chairperson of the Commission—the Minister;
- (b) in the case of resignation of the chairperson of a standing committee—the chairperson of the Commission;
- (c) in the case of resignation of any other member of the Commission or a standing committee—the chairperson of the Commission or standing committee, as the case may be.

Filling casual vacancies

- **2.19(1)** If a vacancy occurs in the office of an appointed member of the Commission or a standing committee during the term of the member's appointment, appointment must be made as prescribed of a person of the relevant prescribed description to fill the vacancy.
- (2) A person appointed under subsection (1) holds office, subject to this Act, for the balance of the term of appointment of the predecessor in the office.
- (3) If the vacancy filled is in the office of a member who was the chairperson of the Commission or deputy chairperson of the Commission or a standing committee, the appointee to the vacancy is not such chairperson or deputy chairperson unless—
 - (a) in the case of an office on the Commission—the appointee is designated by the Governor in Council to be chairperson or deputy chairperson, as the case may be:
 - (b) in the case of an office on a standing committee—the appointee is appointed by the members of the committee to be deputy chairperson.

Manner of exercising power of Commission or standing committees

- **2.20(1)** The Commission or a standing committee exercises a power or performs a function by majority vote of its members present at the meeting at which the exercise or performance is to occur.
- (2) A member who abstains from voting is to be taken to have voted for the negative.
- (3) The chairperson of the Commission or a standing committee has a deliberative vote and, in the event of an equality of votes, a casting vote.

Power of delegation by Commission or standing committees

- **2.21(1)** The Commission or a standing committee may delegate all or any of its powers to any person.
- (2) A standing committee must inform the Commission as soon as is practicable after it has made or revoked a delegation.

Meetings, quorum and business etc. of Commission or standing committees

- **2.22(1)** Except to the extent that the regulations prescribe with respect to the following matters, the Commission or a standing committee may determine—
 - (a) the manner in which and by whom its meetings may be called; and
 - (b) the manner in which its meetings are to be conducted; and
 - (c) the frequency of its meetings; and
 - (d) the notice of its meetings to be given to its members and the manner of giving notice; and
 - (e) the quorum for its meetings; and
 - (f) the manner in which and by whom its decisions are recorded and the procedure for the confirmation of the correctness of that record.
- (2) The chairperson of the Commission or a standing committee must preside at every meeting of the Commission or standing committee at

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which he or she is present and, in his or her absence, the deputy chairperson of the Commission or standing committee, if he or she is present, must so preside.

If the chairperson and the deputy chairperson are both absent from a meeting, a member of the Commission or standing committee, elected from among the members who are present, may preside at the meeting.

Validity of proceedings

- **2.23** An action or a proceeding of the Commission or a standing committee is not invalidated or prejudiced because, at the time the action was done or proceeding was taken—
 - (a) there were vacancies in the membership of the Commission or standing committee not exceeding one third of the whole number of members required to constitute the Commission or standing committee; or
 - (b) all of the members of the Commission or standing committee were not present at the meeting at which the action was done or proceeding was taken; or
 - (c) there is a defect in the qualification, appointment or membership of any member or members who joined in doing the action or taking the proceeding.

Authentication of documents

2.24 Except as otherwise prescribed, a document made or issued by the Commission or a standing committee for the purposes of this Act is sufficiently authenticated if it is made or, as the case may be, issued by the chairperson of the Commission or standing committee.

Remuneration to members of Commission, standing committees and other committees

- **2.25(1)** Members of the Commission, members of a standing committee or subcommittee of the Commission or a subcommittee of a standing committee or other committee established under this Act are to be paid such fees, allowances and expenses, if any, as the Governor in Council determines for the time being.
- (2) Fees, allowances and expenses may differ in respect of different members according to class of payment, rate or office held on the Commission, a standing committee or other committee.
- (3) A provision in any Act requiring the holder of a specified office to devote the whole of the holder's time to the duties of that office or prohibiting the holder from engaging in employment outside the duties of that office does not disqualify the holder from holding that office and also the office of a member of the Commission, a standing committee, or other committee or from accepting and retaining any fees, allowances or expenses payable to the member under this section.
- (4) A fee, allowance or amount by way of expenses is not payable to a member who is an officer or employee of the Commission or the public service for attendance at a meeting of the Commission, a standing committee or other committee established under this Act held during the ordinary office working hours of that member.

Division 4—Vocational Education, Training and Employment Corporation

Director-General to be corporation sole

- **2.26(1)** The corporation sole constituted by the Minister under the repealed Act—
 - (a) is preserved, continued in existence and constituted for the purposes of this Act; and
 - (b) is called the Vocational Education, Training and Employment Corporation.

(2) The corporation sole—

- (a) on the commencement of this Act, ceases to be constituted by the Minister; and
- (b) on and from the commencement of this Act, is constituted by the Director-General.

(3) The corporation sole—

- (a) has perpetual succession and an official seal; and
- (b) is capable in law of—
 - (i) suing and being sued; and
 - (ii) acquiring, holding, leasing, letting, exchanging and disposing of property; and
 - (iii) participating in forming corporations, and being a member or manager of any corporation or unincorporated body under section 2.29; and
 - (iv) forming or establishing, or participating in forming or establishing, any association, trust or other arrangement for any purpose calculated to further in any way the objects of this Act; and
 - (v) compounding or proving in any court of competent jurisdiction all debts or sums of money due to it; and
 - (vi) accepting gifts, grants, bequests or devises and creating and administering trust funds; and
 - (vii) doing and suffering all such other actions and things as bodies corporate may in law do and suffer.
- (4) All courts, judges and persons acting judicially must take judicial notice of the imprint of the official seal of the Corporation affixed to a document and must presume that it was duly affixed until the contrary is proved.

Corporation subject to direction of the Minister

- **2.27(1)** In respect of matters of policy and in exercise of its powers, and performance of its functions, under this Act, the Corporation is subject to directions given to it in writing by the Minister and is to comply with such directions.
- (2) Directions given by the Minister in a financial year must be disclosed in the annual report of the department prepared in relation to that financial year.

Functions of Corporation

- **2.28(1)** The functions of the Corporation are—
 - (a) to promote the creation of employment opportunities in the State; and
 - (b) to work in co-operation with other government bodies and industry, commerce and community groups and persons on matters concerning vocational education, training and employment services; and
 - (c) to develop and provide, and to promote the development and provision by others of, vocational education and training programs with a view to meeting the State's need for a highly skilled and adaptable workforce; and
 - (d) to provide, and to promote the provision by others of, programs appropriate to personal skills enrichment and recreation and leisure activities; and
 - (e) to provide encouragement and opportunities for people to enter upon and to continue learning throughout their lives; and
 - (f) to provide facilities or services for study, research, vocational education, training and employment services; and
 - (g) to undertake consultancy or other services for commercial organisations, public bodies or individuals; and
 - (h) to aid or engage in the development or promotion of research associated with vocational education, training and employment or the

application or use of the results of such research; and

- (i) to prepare, publish, distribute or license the use of literary or artistic work, audio or audio-visual material or computer software; and
- (j) to exploit commercially any facility or resource of the Corporation including any study, research or knowledge, or the practical application of any study, research or knowledge, developed by or belonging (whether alone or jointly with any other person or body) to the Corporation; and
- (k) to seek or encourage gifts to or for the purpose of the Corporation; and
- (l) to undertake research and development related to all or any of its functions; and
- (m) to pursue any other object or purpose not inconsistent with this Act, which the Corporation considers appropriate.
- (2) The function specified in subsection (1)(k) does not extend to seeking or encouraging gifts in consideration of benefits to be conferred by the Corporation.
- (3) If a gift is made to the Corporation, details of the gift and of any condition to which it is subject must be recorded in a register of gifts kept by the Corporation and held available for public inspection free of charge.

Power of Corporation to be a member of other bodies

- **2.29(1)** The Corporation or a person authorised by it for the purpose—
 - (a) may become and be a member or manager of any corporation or any unincorporated body that—
 - (i) has among its objects vocational education, training and employment or research or any associated matter; or
 - (ii) in the opinion of the Corporation, is engaged in the furtherance of vocational education, training or employment; and
 - (b) may enter into agreements with any corporation, body or person in respect of any of those objects.

- (2) Nothing in subsection (1)(a) is to be construed as empowering the Corporation to assume membership or management of any corporation or unincorporated body except pursuant to agreement with its governing body.
- (3) The Corporation or its nominee may be a member of the governing body of any corporation or unincorporated body of which it, or the nominee, is a member or manager.
- (4) The Corporation may incur expenditure for contributions or other liability that membership of a corporation or unincorporated body entails.

Returns to be furnished as required

2.30 A corporation in whose formation the Corporation has participated, and a corporation or unincorporated body of which the Corporation, or its nominee, is a member or manager must furnish to the Minister reports, returns and information as to its affairs required by the Minister from time to time.

Use of facilities and staff

2.31 The Corporation may contract, or enter into an arrangement, with any person or body for the use by that person or body of the facilities and staff available to the Corporation.

Power to continue and establish State colleges

- **2.32** The Corporation may—
 - (a) continue and maintain all State colleges in existence at the commencement of this Act; and
 - (b) establish and maintain such State colleges as it considers necessary or desirable for the purposes of this Act.

Powers incident to maintaining State colleges

- **2.33(1)** For maintaining State colleges, the Corporation may make provision for, or rules with respect to, any of the following matters—
 - (a) management and conduct of State colleges and the powers and duties of persons engaged in conducting such colleges or any part of them; and
 - (b) production and sale of vocational education and training materials, services for vocational education and training and the making of agreements with persons in respect of such materials or services; and
 - (c) courses to be offered and services to be provided in State colleges; and
 - (d) exploitation commercially of facilities and resources of the Corporation (including studies, research and knowledge and the practical application of them) developed by the Corporation, or belonging (whether alone or jointly with any other person or body) to the Corporation; and
 - (e) effectual use of property, apparatus and appliances of State colleges for vocational education and training; and
 - (f) establishment of facilities designed to support provision of vocational education and training and conditions on which such facilities may be used; and
 - (g) establishment and conduct of research and consultancy centres and the affiliation of a State college with an educational or research establishment; and
 - (h) use of State colleges' premises, property, apparatus, facilities and materials for purposes other than vocational education and training; and
 - (i) conditions for enrolment and obtaining instruction in State colleges other than the payment of fees; and
 - (j) attendance of students at State colleges and exclusion and expulsion of students or any other persons from State colleges; and
 - (k) assessment of students and granting of academic awards; and

- (l) establishment and conduct of student organisations; and
- (m) disciplinary penalties for breaches of rules applicable in State colleges; and
- (n) enforcement of occupational health and safety conditions considered by the Corporation to be necessary; and
- (o) other matters associated with or relevant to the maintenance of State colleges or the provision of vocational education and training considered by the Corporation to be appropriate.
- (2) Rules made under subsection (1) may be expressed to apply in all State colleges, or in any one or more of them, and have application accordingly.
- (3) Section 28A of the *Acts Interpretation Act 1954* (tabling of regulations) applies to rules made by the Corporation as if they were regulations.

Trespass on State colleges

- **2.34(1)** A person must not be on premises comprising a State college except with lawful authority or excuse.
- (2) A person found on premises in contravention of subsection (1), who fails to comply with a request to leave the premises, may be removed from the premises by—
 - the director of the State college concerned or a person authorised by the director; or
 - a police officer;

using such reasonable force as is necessary for the purpose.

- (3) The director, authorised person or police officer may require a person found contravening subsection (1) to state in full details of the person's name and the address of his or her place of residence and, if it is suspected on reasonable grounds that a name or address stated is not correct, to produce evidence of the correctness of the person's name or place of residence.
 - (4) A police officer exercising power under this section is acting in

execution of duty.

Production and sale of materials and services

- **2.35(1)** The Corporation may produce and sell vocational education and training materials and services and may make agreements with any persons for those purposes.
- (2) The Corporation is not empowered to prescribe or require the use of materials or services produced under subsection (1) in any place other than a State college.

Power of delegation by Corporation

2.36 The Corporation may delegate all or any of its powers under this Act to any person.

Division 5—Trusts, gifts and fees

Approved scheme

2.37 In this Division—

"approved scheme" means a scheme prepared under section 2.38(1) and approved by the Minister.

Variation of trust purposes

- **2.38(1)** If property is held by or for the Commission or Corporation, at the commencement of this Act or at any later time, on terms requiring the property or income from the property to be applied to any purpose and—
 - (a) the purpose has been effected; or
 - (b) the purpose has ceased to exist; or
 - (c) the purpose has been adequately provided for otherwise; or
 - (d) the purpose is uncertain or insufficiently defined or cannot be identified; or

- (e) it is or becomes impossible, impracticable or inexpedient to carry out the purpose; or
- (f) the property or income from the property is inadequate to carry out the purpose;

the Commission or Corporation, as the case may be, may, subject to this section, cause to be prepared a scheme by which the property or any part of it or the income from the property will be applied to a purpose designated in the scheme.

- (2) A scheme prepared under subsection (1) must be submitted to the Minister and is of no effect unless it is approved by the Minister.
- (3) Immediately on the Minister approving of a scheme the approved scheme must be published in the Industrial Gazette.
- (4) When an approved scheme takes effect in relation to property, the property or income from the property, according as the scheme provides—
 - (a) is not to be applied to the purpose for which it was held immediately before the approved scheme took effect; and
 - (b) is to be applied to the purpose designated in the approved scheme.
- (5) It is not competent for the Commission or Corporation to cause a scheme to be prepared under subsection (1) if an instrument of trust under which property is held on trust provides for the consequences to ensue upon the happening of the events that have occurred.

Amendment of approved scheme

- **2.39(1)** The Commission or Corporation may amend an approved scheme by submitting the desired amendment to the Minister.
- (2) An amendment of an approved scheme is of no effect unless it is approved by the Minister.
 - (3) On an amendment being approved by the Minister—
 - (a) the amendment as approved must be published in the Industrial Gazette; and
 - (b) the approved scheme, amended in accordance with the

amendment as approved, becomes the approved scheme in relation to the property to which it relates, or to the part of that property to which the approved scheme as so amended relates.

Requirement for schemes

- **2.40(1)** In selecting a purpose to be designated in a scheme prepared under section 2.38(1), or in an amendment of an approved scheme, the Commission or Corporation is to select a purpose that in its opinion is as nearly similar to the purpose for which the property in question is held by or for it immediately before the scheme's preparation or amendment as is consistent with—
 - (a) usefulness of purpose; and
 - (b) convenient realisation.
- (2) The fact that any purpose other than one selected by the Commission or Corporation might have been selected, or should have been selected, in connection with any scheme is not to be adjudged sufficient reason—
 - (a) to declare invalid or defective the selection made by the Commission or Corporation; or
 - (b) to prevent the carrying out of the purpose selected by the Commission or Corporation.

Recording schemes in land register

- **2.41(1)** If property to which an approved scheme, or an amendment of an approved scheme, relates consists wholly or partly of land, within one month following publication of the approved scheme or amendment in the Industrial Gazette the Commission or Corporation must notify the Registrar of Titles, Registrar of Dealings or other person charged by law with recording dealings in respect of the land of the approved scheme or amendment.
- (2) On receipt of the notification and of a request by or on behalf of the Commission or Corporation in acceptable form, the registrar or other person is to cause to be made in the appropriate register all such entries as are necessary to record the existence of the approved scheme or the

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amendment.

Rights and jurisdiction in equity not affected

- **2.42** Except as is otherwise prescribed by this Division, the provisions of this Division do not affect—
 - (a) rights, entitlements and obligations conferred or imposed by law in respect of property held on trust; or
 - (b) the jurisdiction of a court to enforce, or declare with respect to, trusts.

Provision for payment of fees

- **2.43(1)** The Corporation, with the approval of the Minister, may, by rules, provide for payment of fees and charges for instruction, assessment or other services provided in or by means of State colleges.
- (2) On approval by the Governor in Council of rules made under subsection (1) and their publication in the Industrial Gazette, such rules are binding on and must be given effect by all persons concerned.
- (3) Section 28A of the *Acts Interpretation Act 1954* (tabling of regulations) applies to rules made under subsection (1) as if they were regulations.

Disposal of moneys

2.44 All fees and other moneys received under authority of this Act are to be applied to the purposes of this Act.

Division 6—Employment of staff and other persons

Commission staff

- **2.45(1)** Appointment may be made from time to time, under the *Public Service Management and Employment Act 1988*, of such number of officers as is necessary for the Commission to effectually exercise its powers and perform its functions.
- (2) An officer of the public service may be appointed to and hold an office for the effectual administration of this Act concurrently with any other office held by such officer.

Engagement of other persons

2.46 Such number of consultants or other persons of relevant competence may be engaged, as permitted by the *Public Service Management and Employment Act 1988*, as is necessary for attaining the objects and purposes of the Commission.

Appointment of training or welfare consultants

2.47 Appointment may be made from time to time under the *Public Service Management and Employment Act 1988* of such number of training consultants or welfare consultants as is necessary for the effectual administration of this Act.

A person may be appointed as both a training consultant and a welfare consultant.

Division 7—State college councils

Establishment and constitution of councils

- **2.48(1)** For each State college there is to be established, in a manner determined by the Minister, and maintained a college council.
 - (2) Subject to any variation therein directed by the Minister, a State

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college council consists of-

- (a) the director, who is a member *ex officio* and is executive officer of the council; and
- (b) an officer of the department nominated by the Director-General; and
- (c) a representative of the Commonwealth Minister responsible for vocational education and training nominated by the chief officer in the State of the department of government administered by the Commonwealth Minister; and
- (d) a staff representative, nominated by the State college staff; and
- (e) a student representative nominated by the student body recognised by the director as representing the students enrolled at the college; and
- (f) a person nominated by an industrial organisation of employers, selected by the director; and
- (g) a person representing industrial organisations of employees, nominated by The Trades and Labor Council of Queensland; and
- (h) the chairperson for the time being of any campus council associated with the State college, who is a member *ex officio*; and
- (i) a person drawn from the area of general education, nominated by the Minister for Education; and
- (j) a number of persons, not exceeding 8, as representing—
 - industry;
 - commerce;
 - industrial organisations of employees;
 - local government;
 - general education;
 - the community at large;

nominated by the director; and

(k) a number of persons, not exceeding 3, as representing industries

in the region in which the State college is situated, nominated by the relevant industry training advisory bodies.

(3) Directions given by the Minister in any financial year must be disclosed in the annual report of the department prepared in relation to that financial year.

Functions of State college council

- **2.49** The functions of a State college council are—
 - (a) at the college level—
 - (i) to consult with and advise the director on all matters pertaining to the policy and direction of the State college, including—
 - (A) the strategic direction of the college and its profile of services to be offered for inclusion in the college development plan, commitment plan and financial estimates; and
 - (B) priorities of courses and activities; and
 - (C) identification of on-going and emerging needs in vocational education and training in the community; and
 - (D) physical and human resources to provide courses and activities; and
 - (E) the need for review and development of services to students; and
 - (F) the relevance of college curricula; and
 - (G) joint ventures with industry, commerce and the community; and
 - (ii) to assist the director, where appropriate, in any review, negotiation or other process in relation to any matter referred to in paragraph (i); and
 - (iii) if required by the director to do so—
 - (A) to assist the director in assessment of overall student

performance; and

- (B) to assist in college staffing by participating in selection panels; and
- (C) to assist in college operations by providing representation on college committees; and
- (D) to participate in college procedures for determining appeals by students against assessment, exclusion or discipline; and
- (iv) to provide a means of communication and information between the college and the community; and
- (v) in consultation with industry training advisory bodies, to encourage the establishment of local industry advisory committees; and
- (vi) to advise in relation to appointment of the director, if requested to do so by the Director-General; and
- (vii) to establish subcommittees, and arrange for assistance as required, to assist the council in performance of its functions; and
- (b) at the regional level—to advise or inform management in the region as to—
 - (i) regional needs; and
 - (ii) initiatives, strategies, networks and co-operative endeavours between the college and other regional institutions or bodies;

with a view to improving regional economic development by making the most effective use of resources available for vocational education, training and employment services; and

- (c) at the State level—
 - (i) to inform the Commission on council's view of—
 - (A) existing Commission policies relating to vocational education, training and employment; and
 - (B) future policy directions proposed by the Commission; and

- (ii) to identify issues related to vocational education, training and employment which need to be considered by the Commission; and
- (iii) to advise the Commission as to ways and means of improving the service delivery of the network of State colleges and the operations of State college councils.

Appointment of members

- **2.50(1)** The members of a State college council, other than a member *ex officio*, are to be appointed by the Minister.
- (2) Appointment of a member of a State college council is for a term of 3 years but if, by the expiry of that term, a successor has not been duly appointed the member continues in office, subject to this Act, for a period of 6 months or until a successor is duly appointed, whichever period is less.

Removal of members

2.51 A member of a State college council, other than a member *ex officio*, may be removed from office at any time by the Minister, by written notice given to the member.

Chairperson, deputy chairperson

2.52 The members of a State college council are to appoint from their number a chairperson and a deputy chairperson for a period, not exceeding the term of appointment of the appointee to the council, directed by the Minister or, if there be no direction by the Minister, determined by the members, and the appointee is the chairperson or deputy chairperson of the council.

Vacancy in membership

- **2.53** A vacancy occurs in the office of an appointed member of a State college council if the member—
 - (a) dies; or
 - (b) resigns by signed writing delivered to the director; or
 - (c) is absent, without leave of the council first obtained and without reasonable excuse, from 3 consecutive ordinary meetings of the council of which meetings notice has been given to the member; or
 - (d) is removed from office as prescribed.

Filling casual vacancies

- **2.54(1)** If a vacancy occurs in the office of an appointed member of a State college council during the term of the member's appointment, the Minister may appoint a person to fill the vacancy.
- (2) A person appointed under subsection (1) holds office, subject to this Act, for the balance of the term of appointment of the predecessor in the office.

PART 3—TRAINING ADMINISTRATION

Division 1—Vocational education and training establishments

Recognition of vocational education and training establishments as approved training organisations

- **3.1(1)** The Commission may require such vocational education and training establishments, or categories of such establishments, as are notified from time to time in the Industrial Gazette to be recognised as approved training organisations in accordance with this section.
 - (2) The person responsible for the conduct and management of a

vocational education and training establishment in respect of which, or of a category in respect of which, a notification has been published under subsection (1) must make application to have the vocational education and training establishment recognised as an approved training organisation and when it is so recognised must keep the establishment so recognised.

- (3) A person responsible for the conduct and management of a vocational education and training establishment may voluntarily apply to have that establishment recognised by the Commission as an approved training organisation.
 - (4) Every application for recognition under this section—
 - (a) must be made to the chairperson of the Commission in a form determined by the Commission; and
 - (b) must contain such particulars as are determined by the Commission; and
 - (c) must be accompanied by the prescribed fee.
- (5) The Commission must consider each application and may grant or refuse it.
- **(6)** If the Commission grants an application, it must issue a certificate of recognition to the applicant.
 - (7) A certificate of recognition issued under this section—
 - (a) must be in a form determined by the Commission and contain such particulars as are determined by the Commission; and
 - (b) is in force for the period specified by the Commission in the certificate unless sooner cancelled or suspended; and
 - (c) is subject to such terms, conditions or restrictions as are specified by the Commission in the certificate; and
 - (d) authorises the holder to do such actions and things as are specified by the Commission in the certificate; and
 - (e) may be transferred, surrendered or renewed; and
 - (f) may be amended, altered, varied or modified by the Commission.
 - (8) The Commission must establish and maintain a register of vocational

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education and training establishments recognised as approved training organisations under this Act.

The register is to be in such form and contain such particulars as are determined by the Commission.

Renewal of certificate

- **3.2(1)** The holder for the time being of a certificate of recognition of an approved training organisation may apply to have the certificate renewed in accordance with this section.
 - (2) An application for renewal of recognition—
 - (a) must be made to the chairperson of the Commission in a form determined by the Commission; and
 - (b) must contain such particulars as are determined by the Commission; and
 - (c) must be accompanied by the prescribed fee.
- (3) The Commission must consider each application for renewal and may grant or refuse it.
- (4) If the Commission grants an application for renewal, it must cause written notification to be given to the applicant together with written notification of—
 - (a) the period of renewal; and
 - (b) the terms, conditions and restrictions (if any) imposed by it on the renewal.

Notification of refusal of application

3.3 If the Commission refuses an application for a certificate under section 3.1 or an application for renewal of a certificate under section 3.2 it must cause written notification to be given to the applicant together with written notification of the reasons for its refusal.

Conduct of unrecognised establishment required to be recognised

3.4 After the expiry of 60 days following publication of a notification under section 3.1(1) a person must not conduct a vocational education and training establishment in respect of which, or of a category in respect of which, the notification was published, if there is not in force in respect of the establishment a certificate of recognition issued under section 3.1.

Cancellation or suspension of recognition

- **3.5(1)** The Commission may cancel or suspend for any period a certificate of recognition under section 3.1 if—
 - (a) the certificate was issued in error or granted in consequence of a false or misleading document, statement or representation; or
 - (b) the holder is convicted of an offence against this Act or contravenes any term, condition or restriction of the certificate; or
 - (c) there has been a substantial change in the establishment to which the certificate relates since its issue; or
 - (d) for any reason the Commission is of the opinion that the holder is not a fit and proper person to hold it.
- (2) The power to cancel or suspend a certificate of recognition includes power to cancel or suspend the certificate wholly or partly.
- (3) A lawful cancellation or suspension of a certificate of recognition does not give rise to a right to compensation.
- (4) The holder of a certificate of recognition that is cancelled or suspended must deliver the certificate to the chairperson of the Commission within 7 days following demand made on the holder therefor.
- (5) If a person convicted of an offence against this Act that consists in a failure to comply with subsection (4) fails to deliver the certificate to the chairperson of the Commission within 14 days following the conviction, that person commits a continuing offence, which may be charged in one complaint, from time to time, in respect of any period, and is liable to a penalty not exceeding 2 penalty units for each day during which the failure continues.

Offence re advertising vocational education and training establishment or program

- **3.6(1)** A person who—
 - (a) publishes in the State; or
 - (b) in the State, does any action or takes any step to cause to be published outside the State;

any advertisement or statement relating to—

- (c) a vocational education and training establishment; or
- (d) a programme or course of instruction relating to vocational education or training;

that the Commission considers to be false or misleading may be called on, by written notice signed by the chairperson of the Commission, to show cause to the Commission on a day and at a time and place specified in the notice why publication of the advertisement or statement should not be discontinued.

- (2) If a person called on under subsection (1) fails to appear in response to the notice, or, having appeared, fails to show sufficient cause in the Commission's opinion, the Commission, if it is satisfied that the advertisement or statement is false or misleading, may by its order direct that publication of the advertisement or statement be discontinued.
- (3) A person to whom an order made under subsection (2) is directed must comply immediately with the order.
- (4) If a person convicted of an offence against this Act that consists in a failure to comply with an order made under subsection (2) fails to discontinue publication of the advertisement or statement to which the order relates within 14 days following the conviction, that person commits a continuing offence, which may be charged in one complaint, from time to time, in respect of any period, and is liable to a penalty not exceeding 2 penalty units for each day during which the failure continues.

Authority required to confer awards

- **3.7(1)** In this section—
- **"award"** means a diploma of whatever description or certificate of whatever description denoted by words, abbreviation of words or letters;

"duly authorised" means authorised—

- (a) by an Act or a law of the Commonwealth, another State or a Territory; or
- (b) by the Minister; or
- (c) on behalf of the Government of the Commonwealth, another State or a Territory.
- (2) A person who conducts a vocational education and training establishment (whether recognised under this Act or not) must not—
 - (a) confer or offer to confer; or
- (b) hold himself or herself out as competent in law to confer; an award, unless the person is duly authorised to confer the award.
- (3) A person who conducts a vocational education and training establishment (whether recognised under this Act or not) must not—
 - (a) print, publish, exhibit or send to another; or
- (b) cause to be printed, published, exhibited or sent to another; a document that is calculated by the person, or is likely, to induce a belief that any person—
 - (c) will confer; or
 - (d) undertakes or offers to confer; or
- (e) holds himself or herself out as competent in law to confer; an award, in the State or elsewhere, unless the last-mentioned person is duly authorised to confer the award.
 - (4) It is lawful for a person—
 - (a) to confer or offer to confer; or

- (b) to hold himself or herself out as competent in law to confer; an award, with the approval of the Commission first obtained or, in the absence of such approval, if—
 - (c) the award is clearly endorsed with the prescribed words; and
 - (d) any advertisement or statement published by or on behalf of such person that includes the word "diploma" or "certificate" is clearly endorsed with the prescribed words in the same print-size as that word.
 - (5) The prescribed words referred to in subsection (4) are—

"The course for which this award is issued has not been accredited under the *Vocational Education, Training and Employment Act 1991*".

Division 2—Apprenticeships

Trades that are apprenticeship callings

- **3.8(1)** The provisions of this Act that provide for, or in connection with, apprenticeships or apprentices apply in respect of all apprenticeship callings.
- (2) A trade declared or determined to be an apprenticeship calling in relation to an industry specified in the relevant order in council or notification is an apprenticeship calling only to the extent that it is a trade within that industry.
- (3) The State Training Council may determine that apprentices be apprenticed to any portion of an apprenticeship calling, and in that event apprentices are to be apprenticed in that apprenticeship calling by reference to the calling and the portion in which they are apprenticed and the provisions of this Act that provide for, or in connection with, apprenticeships or apprentices apply to those apprentices and their employers.
- (4) The State Training Council may determine that apprentices be apprenticed to a group of occupations, of which one at least is an apprenticeship calling, or portion of an apprenticeship calling, and apprentices are to be so apprenticed.

The conditions attached to such apprenticeships are as determined by the State Training Council.

- (5) Determinations made by the State Training Council in accordance with this section are to be published in the Industrial Gazette.
- (6) An employer may make application to the State Training Council to indenture a person as an apprentice in an occupation that is not an apprenticeship calling and, where the employer and that person so agree, the State Training Council may approve that an indenture be entered into in respect of that person and in that case all the provisions of this Act that provide for, or in connection with, apprenticeships and apprentices apply to the apprenticeship evidenced by that indenture as if it were an apprenticeship in an apprenticeship calling and to that person so indentured.

Minimum qualifications for apprenticeships

- **3.9(1)** The State Training Council may determine, by Industrial Gazette notice—
 - the age; and
 - the minimum standard of education;

that a person must have attained before he or she may become an apprentice in an apprenticeship calling.

- (2) Different ages and minimum standards of education may be determined in relation to different apprenticeship callings or groups of occupations.
- (3) In the case of a person who has received education outside the State, the minimum standard of education is that determined, as prescribed, by the State Training Council as being equal to the standard determined under subsection (1) for the apprenticeship calling in question.
- (4) Despite any determination under subsection (1), the State Training Council may approve of a person, who has not attained the age or minimum standard of education determined for entry into an apprenticeship in an apprenticeship calling, entering into such apprenticeship.

Restrictions on employing persons under 21

3.10(1) A person must not employ or use in an apprenticeship calling a person who has not attained the age of 21 years unless the last-mentioned person—

Employment

- (a) has completed an apprenticeship in that apprenticeship calling; or
- (b) is an apprentice in that apprenticeship calling employed by the first-mentioned person.
- (2) A person must not employ a person who has not attained the age of 21 years as an apprentice in an apprenticeship calling otherwise than in accordance with this Act.
- (3) A person who has not attained the age of 21 years must not, without the approval of the State Training Council first obtained—
 - (a) engage in an apprenticeship calling on his or her own behalf unless the person has completed an apprenticeship in that calling; or
 - (b) engage as an apprentice in employment with another, otherwise than in accordance with this Act.

Prohibition of premium in respect of apprenticeship

- **3.11(1)** A person must not demand, accept or agree to accept directly or indirectly from any other person a premium for or in connection with—
 - (a) the employment of an apprentice in an apprenticeship calling; or
 - (b) inducing or attempting to induce any other person to employ an apprentice in an apprenticeship calling; or
 - (c) the transfer or cancellation of an indenture.
- (2) On a conviction for an offence defined in subsection (1) the court, in addition to imposing a penalty, may order the defendant to reimburse the person who paid or gave the premium, by way of payment or repayment of the amount or value of the premium, or return of the thing given.
- (3) Any such order may be filed in a court having jurisdiction in action for debt in the amount or value ordered to be paid or repaid as reimbursement or the value of the thing ordered to be returned, as the case

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may be, and thereupon the order may be enforced as an order of that court for payment of that amount or value.

Employer's entitlement to apprentice

- **3.12(1)** A person who—
 - (a) is a tradesperson in an apprenticeship calling; or
 - (b) employs a tradesperson in an apprenticeship calling;

is entitled to employ at least one apprentice in the apprenticeship calling.

- (2) Subsection (1) does not apply to a person whom the State Training Council has determined not to have sufficient plant, facilities and tradespersons to adequately train an apprentice in the apprenticeship calling in question.
- (3) A group of 2 or more persons engaged in an apprenticeship calling that satisfies the State Training Council that it collectively has sufficient plant, facilities and tradespersons to adequately train apprentices in the apprenticeship calling may be permitted by the State Training Council to indenture a person as an apprentice in the apprenticeship calling.
- (4) The members of a group so permitted to indenture an apprentice have jointly and severally the liabilities in respect of the apprentice indentured to the group determined by the State Training Council and notified to each member of the group.

Each member of the group must comply with the State Training Council's determination.

- (5) Subsection (2) does not affect—
 - (a) an industrial organisation; or
 - (b) a group training scheme; or
 - (c) a person who contracts out the person's work, wholly or substantially, to subcontractors;

if the industrial organisation, scheme or person can place apprentices with members, employers or subcontractors respectively who, in the opinion of the State Training Council, can collectively provide sufficient plant, facilities

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and tradespersons to adequately train apprentices in the apprenticeship calling in question.

Registration and indenturing of apprentices

- **3.13(1)** A person who has entered into an arrangement with an employer to become an apprentice and, if that person is a minor, that person's guardian must make application to the State Training Council, in a form approved by it, for registration of that person with the State Training Council as an apprentice.
- (2) An employer who has entered into an arrangement with a person to employ that person as an apprentice must make application to the State Training Council, in a form approved by it, for the indenture of that person to the employer as an apprentice.
- (3) On receipt of the applications referred to in subsections (1) and (2) the State Training Council must record in the register of apprentices the names of the applicants and such other particulars as are prescribed or so far as not prescribed as are determined by the council, relating to the person applying for registration as an apprentice and the employer applying for the indenture of that person to the employer as an apprentice.
- (4) The State Training Council must consider each application made under this section and may approve or reject it.
- (5) If the State Training Council approves of the applications received by it in respect of a person registered as an apprentice under subsection (3), that person subject to compliance with the requirements of this Act, is to be indentured by the council to the employer with whom the arrangement to become an apprentice has been made.
- (6) When an apprentice is indentured to an employer the State Training Council must notify the apprentice and, if the apprentice is a minor, the apprentice's guardian, and the employer, in writing, of the indenture in the form of an indenture of apprenticeship.
- (7) If the State Training Council rejects applications received by it under subsections (1) and (2), it must—
 - (a) give written notification to the employer, the apprentice and, if the apprentice is a minor, the apprentice's guardian of the rejection and its

reasons for the rejection; and

(b) remove the apprentice's name from the register of apprentices.

Register of apprentices

3.14 The State Training Council is to establish and maintain a register of apprentices in such form, as is prescribed, or, so far as not prescribed, as is determined by the council.

Probationers

- **3.15(1)** A person who becomes an apprentice under section 3.13 is to be employed by the employer on probation, for 3 months from the commencement of employment, on trade work or for such longer period, not exceeding 6 months, as the State Training Council allows.
- (2) The probationary period served by a probationer is included in and forms part of the period of the apprenticeship.
- (3) If a probationer is absent from work during the probationary period, that period is extended by the period of absence.
- (4) Service of a probationer may be terminated during the probationary period by giving one week's notice—
 - (a) by the probationer to the employer; or
 - (b) by the employer to the probationer;

and in default of such notice—

- (c) if the probationer terminates the service—the probationer forfeits to the employer a sum equal to one week's wages of the probationer in lieu of notice; or
- (d) if the employer terminates the service—the employer must pay to the probationer a sum equal to one week's wages of the probationer in lieu of notice, unless the service is terminated because of the probationer's misconduct.
- (5) A sum forfeited or payable as prescribed by subsection (4) and not recovered constitutes a debt due and owing by the probationer to the

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employer or by the employer to the probationer, as the case may be, and may be recovered by action in an Industrial Magistrates Court or as prescribed.

(6) An indenture executed by the employer and the probationer before termination of the probationer's service as prescribed is cancelled by such termination and is of no further force or effect.

Indenture of apprenticeship

- **3.16(1)** Every indenture must contain the prescribed particulars.
- (2) The parties to an indenture are—
 - (a) the employer; and
 - (b) the apprentice and, if the apprentice is a minor, the apprentice's guardian; and
 - (c) the State Training Council.
- (3) For the purpose of a person becoming an apprentice under section 3.13 the employer, the apprentice and, if the apprentice is a minor, the apprentice's guardian, must execute an indenture and return the indenture to the State Training Council before the expiry of the probationary period.
- (4) The indenture is to be taken to have been executed by the State Training Council on the day the council approves the employer's application for an apprentice.
- (5) The State Training Council is to retain an indenture executed under this section and give a copy of it to every other party.
- (6) A person who is indentured as an apprentice to an employer under section 3.13 and who continues to be employed by the employer after expiry of the probationary period is to be taken to have been an apprentice indentured to the employer in the apprenticeship calling in question on and from the commencement of the person's probation with the employer, although an indenture had not then been duly executed as prescribed.

(7) An indenture—

(a) binds the apprentice who is a party throughout the period of the indenture, although the apprentice had not attained the age of 18 years

when he or she became a party and has since attained that age; and

(b) binds the guardian of an apprentice who is a party until the apprentice attains the age of 18 years.

Completion of apprenticeship

- **3.17(1)** The period of apprenticeship in an apprenticeship calling or to a group of occupations is as determined by the State Training Council, which may determine that an apprenticeship is completed—
 - (a) on effluxion of time; or
 - (b) on the apprentice attaining a level of trade competence such that he or she may be regarded as a qualified tradesperson;

or both.

- (2) The period of apprenticeship in a portion of an apprenticeship calling is, subject to this Act, as determined by the State Training Council having regard to the period of apprenticeship in the apprenticeship calling in question determined under subsection (1).
- (3) The State Training Council may examine the progress made by any apprentice and—
 - (a) if it is satisfied that the apprentice has failed to make progress in theoretical or practical knowledge appropriate to any stage of the apprenticeship—may extend a year of apprenticeship or the period of apprenticeship, or both, for that apprentice for such period as it thinks fit:
 - (b) if it is satisfied that the apprentice is attaining high standards of education and trade experience—may reduce a year of apprenticeship or the period of apprenticeship, or both, for that apprentice by such period as it thinks fit.
- (4) The State Training Council may examine the experience and knowledge gained by an apprentice before the commencement of the apprenticeship and, if it is satisfied that because of such experience and knowledge the period of indenture in a particular case should be reduced, it may determine that the period of apprenticeship be reduced to such period as is fixed by the council.

(5) A determination made under subsection (3)(b) or (4) is subject to such terms and conditions as the State Training Council imposes, including a condition that, if the apprentice at any time fails to make progress in the theoretical or practical knowledge applicable at any stage to the apprenticeship calling, the council may extend the period of the apprenticeship for such period as it thinks fit.

Transfer of apprentice

- **3.18(1)** The State Training Council may transfer an apprentice from one employer to another—
 - (a) if it is satisfied that the current employer is not providing the facilities or training necessary to ensure that the apprentice becomes proficient in the apprenticeship calling; or
 - (b) for good cause shown, on the application of the employer, apprentice or the apprentice's guardian.
 - (2) On application made jointly by—
 - (a) a current employer of an apprentice; and
 - (b) a proposed new employer of the apprentice; and
 - (c) the apprentice; and
 - (d) the apprentice's guardian (if any);

the State Training Council may authorise the transfer of the relevant indenture from the current employer to the proposed new employer.

- (3) An apprentice whose apprenticeship is to be transferred under this section must be employed on probation by the new employer for a period not exceeding one month.
- (4) During the probationary period, service of the apprentice may be terminated under section 3.15.
- (5) If service of an apprentice in employment with a new employer is terminated as permitted by subsection (4), the apprentice must return to employment with his or her former employer unless, with the authority of the State Training Council first obtained, the apprenticeship is to be transferred to some other employer.

- (6) If the apprenticeship is to be so transferred, the liability of the former employer under the relevant indenture revives and continues until—
 - (a) the apprenticeship is transferred to the other employer; or
 - (b) the apprenticeship is cancelled; or
 - (c) with the authority of the State Training Council first obtained, the service of the apprentice in employment with the former employer is terminated by the employer or the apprentice;

whichever happens first.

(7) On the expiry of an apprentice's probationary period with a new employer the State Training Council must assign the relevant indenture to the new employer, unless, during that probationary period, service of the apprentice in employment with the new employer has been terminated, as permitted by subsection (4).

An assignment of indenture is in a form approved by the State Training Council.

- (8) On and from the approval of an assignment of indenture by the State Training Council, the assignment is to be taken to have been executed by—
 - (a) the former employer; and
 - (b) the new employer; and
 - (c) the apprentice; and
 - (d) the apprentice's guardian (if any);

and the indenture is binding on—

- (e) the new employer; and
- (f) the apprentice; and
- (g) the apprentice's guardian (if any);

as parties to the indenture.

(9) If the State Training Council is satisfied that the period of employment of an apprentice with an employer to whom the apprenticeship is to be transferred will be for a period not exceeding 6 months, a notification, in a form approved by the council, given to—

- (a) the current employer of the apprentice; and
- (b) the proposed new employer of the apprentice; and
- (c) the apprentice; and
- (d) the apprentice's guardian (if any);

is sufficient authority, for the purposes of this Act, for the temporary transfer of the apprenticeship to the proposed new employer for the period specified in the notification.

- (10) On the expiry of such period the apprentice must return to employment with the current employer.
- (11) An apprentice whose apprenticeship is transferred to a new employer, or whose employment with a new employer is authorised under subsection (9), and who continues to be employed by that employer after expiry of the probationary period is to be taken to have been an apprentice indentured to that employer on and from the commencement of the apprentice's probationary period in employment with that employer, although—
 - (a) the relevant indenture had not then been assigned to the new employer; or
 - (b) the notification referred to in subsection (9) had not then been given.

Attendance at classes and taking examinations

- **3.19(1)** The State Training Council may direct, by Industrial Gazette notice, that every apprentice in the apprenticeship calling or group of apprenticeship callings specified in the direction, must undertake—
 - (a) by attendance at a State college or other college or school approved by the State Training Council; or
 - (b) by correspondence;

as stipulated in the direction, each stage of the course or courses of instruction specified in the direction and may in like manner revoke or vary a direction so given.

- (2) The State Training Council must give written notification to—
 - (a) an employer of an apprentice; and
 - (b) the apprentice and, if the apprentice is a minor, the apprentice's guardian;

of the commencement date, and mode of attendance or study required of the apprentice, for the course or courses of instruction to be undertaken by the apprentice.

- (3) The apprentice must undertake the course or courses of instruction as so notified.
- (4) Unless the parties to an indenture agree to a shorter period of notification, notification under subsection (2) in respect of a course that is to be undertaken by the apprentice who is a party to the indenture by continuous attendance must be given at least 42 days before the commencement of the course.
- (5) Time spent by an apprentice in attendance at a college or school for a course of instruction that the apprentice is required to undertake (not exceeding the maximum time of attendance directed by notification under subsection (1)) is to be regarded as ordinary time worked by the apprentice in his or her employment with the employer, and the apprentice is entitled to be paid by the employer for that time.
- (6) An apprentice may agree with the employer to work in the employer's establishment on any day at times other than times at which the apprentice is required to be in attendance at a college or school referred to in subsection (1) and for such work the apprentice is entitled to all entitlements provided for by the relevant award or industrial agreement for that work.
- (7) An employer must permit an apprentice to take annual holidays at a time other than a time when the apprentice is required to attend a course or courses of instruction by continuous attendance at a college or school referred to in subsection (1).
- (8) An employer to whom is indentured an apprentice required by notification under subsection (1) to undertake a course of instruction by correspondence—
 - (a) must permit the apprentice to be absent during working hours for

- 4 continuous hours in each week for the duration of the course, for the purpose of enabling the apprentice to undertake the course by correspondence; and
- (b) must pay to the apprentice, for those 4 hours, wages at the rate that would have been payable had the apprentice performed work during those 4 hours as ordinary time.
- (9) If an apprentice permitted to be absent as prescribed by subsection (8) fails to devote the whole of the 4 hours leave of absence in each week to undertaking the appropriate course of instruction, the State Training Council may direct that the apprentice be not entitled to such leave of absence for a period specified in the direction, and the apprentice is not entitled to such leave of absence for the period so specified.
- (10) If a course of instruction undertaken by an apprentice as required by a notification under subsection (1) requires that an examination be taken in respect of the course, each apprentice undertaking the course must submit to such examination as specified by the college or school conducting the course undertaken by the apprentice.

Advice of service after termination or transfer of apprenticeship

3.20 On termination of an apprenticeship or transfer of an apprenticeship from one employer to another, the former employer of the apprentice or former apprentice must, within 30 days following the termination or transfer, advise the State Training Council, in a form approved by it, of full details of the time served and the level of the trade competence attained in accordance with the standard set by the council.

Certificate after completion of apprenticeship

- **3.21(1)** The State Training Council must issue to every apprentice who completes an apprenticeship under section 3.17 a certificate to that effect.
- (2) If an apprentice has been indentured to a group of occupations, the certificate referred to in subsection (1) must indicate each of the occupations or the additional skills taught to the apprentice during the term of the indenture.

Apprentice not required to be member of industrial organisation of employees

3.22 An apprentice must not be required or compelled by any person to become a member of an industrial organisation of employees.

Division 3—Traineeships

Training schemes

- **3.23(1)** The State Training Council may approve such training schemes as it considers necessary or desirable to advance knowledge and skills required in industry and commerce.
- (2) A training scheme approved under this section is to provide for such courses of instruction, on the job training, off the job training, and certificates of completion as the State Training Council considers necessary or desirable.
- (3) A training scheme approved by the State Training Council under this section must be notified in the Industrial Gazette.
- (4) The State Training Council may require or authorise training under a training scheme approved under this section to be undertaken in accordance with a training agreement entered into under section 3.25.
- (5) The State Training Council may direct a training consultant, and may authorise any other person (whether or not employed in the public service), to investigate any training scheme.
- (6) A person who investigates a training scheme on behalf of the State Training Council must, on completing the investigation, furnish to the council a report of the results of the investigation and recommendations in respect of the scheme.

Prohibition of premium in respect of traineeship

- **3.24(1)** A person must not demand, accept or agree to accept directly or indirectly from any other person a premium for or in connection with—
 - (a) the employment of a trainee; or

- (b) inducing or attempting to induce any other person to employ a trainee; or
- (c) cancellation of a traineeship agreement.
- (2) On a conviction for an offence defined in subsection (1) the court, in addition to imposing a penalty, may order the defendant to reimburse the person who paid or gave the premium, by way of payment or repayment of the amount or value of the premium, or return of the thing given.
- (3) Any such order may be filed in a court having jurisdiction in action for debt in the amount or value ordered to be paid or repaid as reimbursement or the value of the thing ordered to be returned, as the case may be, and thereupon the order may be enforced as an order of that court for payment of that amount or value.

Registration and approval of trainees

- **3.25(1)** A person who has entered into an arrangement with an employer to become a trainee and, if that person is a minor, that person's guardian must make application to the State Training Council, in a form approved by it, for registration of that person with the council as a trainee.
- (2) An employer who has entered into an arrangement with a person to employ that person as a trainee must make application to the State Training Council, in a form approved by it, for the council's approval of the arrangement.
- (3) On receipt of the applications referred to in subsections (1) and (2) the State Training Council must record in the register of trainees the names of the applicants and such other particulars as are prescribed or so far as not prescribed as are determined by the council relating to the person applying for registration as a trainee and the employer applying for approval as prescribed.
- (4) The State Training Council must consider each application for registration made under this section and may approve or reject it.
- (5) When the State Training Council has approved of the applications received by it in respect of a person registered as a trainee under subsection (3) the council must notify the trainee and, if the trainee is a minor, the trainee's guardian, and the employer in the form of a training agreement to

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be executed by all parties.

- (6) If the State Training Council rejects applications received by it under subsections (1) and (2) it must—
 - (a) give written notification to the employer, the trainee and, if the trainee is a minor, the trainee's guardian of the rejection and its reasons for the rejection; and
 - (b) remove the trainee's name from the register of trainees.

Register of trainees

3.26 The State Training Council is to establish and maintain a register of trainees in such form as is prescribed or, so far as not prescribed, as is determined by the council.

Probationers

- **3.27(1)** A person who becomes a trainee under section 3.25 is to be employed by the employer on probation for a period directed by the State Training Council (not exceeding 3 months) from the commencement of the traineeship.
- (2) The probationary period served by a probationer is included in and forms part of the traineeship.
- (3) If a trainee is absent from work during the probationary period, that period is extended by the period of absence.
- (4) Service of a probationer may be terminated during the probationary period by giving one week's notice—
 - (a) by the probationer to the employer; or
 - (b) by the employer to the probationer;

and in default of such notice—

- (c) if the probationer terminates the service—the probationer forfeits to the employer a sum equal to one week's wages of the probationer in lieu of notice;
- (d) if the employer terminates the service—the employer must pay to

the probationer a sum equal to one week's wages of the probationer in lieu of notice, unless the service is terminated because of the probationer's misconduct.

- (5) A sum forfeited or payable as prescribed by subsection (4) and not recovered constitutes a debt due and owing by the probationer to the employer or by the employer to the probationer, as the case may be, and may be recovered by action in an Industrial Magistrates Court or as prescribed.
- (6) A training agreement executed by the employer and the probationer before termination of the probationer's service as prescribed is cancelled by such termination and is of no further force or effect.

Training agreement

- **3.28(1)** Every training agreement must contain the prescribed particulars.
- (2) The parties to a training agreement are—
 - (a) the employer; and
 - (b) the trainee and, if the trainee is a minor, his or her guardian; and
 - (c) the State Training Council.
- (3) The parties to a training agreement, other than the State Training Council, must execute the agreement and return it to the council before the expiry of the probationary period.
- (4) Where subsection (3) is complied with the training agreement is to be taken to have been executed by the State Training Council on the day the council receives the agreement executed by the other parties.
- (5) Where subsection (3) is not complied with before expiry of the probationary period, the training agreement is to be taken to have been executed by all the parties on the day of expiry unless the applications made under section 3.25(1) and (2) are withdrawn in writing by the respective applicants.
- (6) The State Training Council is to retain a training agreement executed and returned to it under subsection (3) and give a copy of it to each of the other parties.

(7) A training agreement—

- (a) binds the trainee who is a party throughout the period of the agreement, although the trainee had not attained the age of 18 years when he or she became a party and has since attained that age; and
- (b) binds the guardian of a trainee who is a party until the trainee attains the age of 18 years.

Completion of traineeship

- **3.29(1)** The period of traineeship approved under section 3.25 is as determined by the State Training Council and for the purpose of such determination the council may examine the experience and knowledge gained by a trainee before the commencement of the traineeship.
- (2) If the State Training Council, during the period of a particular traineeship, is satisfied that the trainee in that traineeship is attaining high standards of education and experience, it may reduce the period of the traineeship of the trainee by such period as it thinks fit.
- (3) A determination made under subsection (1) or (2) is subject to such terms and conditions as the State Training Council imposes, including a condition that, if the trainee at any time fails to make progress in the theoretical or practical knowledge applicable at any stage to the traineeship, the council may extend the period of the traineeship as it thinks fit.
- (4) When a trainee has successfully completed training under a training agreement the State Training Council must issue to the trainee a certificate to that effect.

Attendance at classes

- **3.30(1)** The State Training Council must give notification in writing to—
 - (a) the employer of a trainee; and
- (b) the trainee and, if the trainee is a minor, the trainee's guardian; of the commencement date of any period of instruction that the trainee is required to undertake by attendance at a State college or other college or school approved by the council.
 - (2) The trainee must attend for the period of instruction as so notified.

Division 4—Other training arrangements

Pre-apprenticeship, pre-vocational and full-time institutional training

- **3.31(1)** The State Training Council may approve that—
 - (a) a pre-apprenticeship course of instruction in an apprenticeship calling; or
 - (b) a pre-vocational course of instruction in a specified group of apprenticeship callings; or
 - (c) a full-time educational and training course of instruction as an alternative to apprenticeship training in an apprenticeship calling;

be introduced into a State college or any other college or school approved by the council for the purpose.

- (2) The State Training Council must consider every course introduced under this section and may determine whether a further period of training under an indenture is necessary for persons who have completed the course to enable them to become competent in that apprenticeship calling for the purpose of being issued with a completion of apprenticeship certificate.
- (3) If the State Training Council determines a further period of training under an indenture is necessary, it must determine that period.
- (4) A determination under subsection (2) may also specify that a person undertake a specified course of instruction by attendance at a State college or other college or school approved by the State Training Council during that

period.

Recognition of work or training

- **3.32(1)** A person may apply to the State Training Council to have any work or training previously performed or undertaken by that person recognised.
- (2) Any such applicant must supply to the State Training Council full details of—
 - (a) in the case of work performed—
 - (i) the period during which it was performed; and
 - (ii) the name and place of business of the applicant's employer (if any) when the work was performed;
 - (b) in the case of training undertaken—
 - (i) the period during which it was undertaken; and
 - (ii) the name and place of business of the person or institution responsible for the training.
- (3) If, after such investigation as it thinks fit of the work or training performed or undertaken by the applicant, the State Training Council is of the opinion that the applicant has had experience and has expertise in a particular occupation sufficient to qualify the person as the holder of a status in relation to that occupation, the State Training Council may—
 - (a) recognise the person's work or training or both; and
 - (b) issue to the person a certificate to the effect that the person is qualified to hold that status and is entitled as specified in the certificate.
- (4) A person to whom a certificate is issued under subsection (3) is to be taken to hold the status referred to in the certificate and has all the entitlements specified in the certificate.
- (5) The State Training Council may cancel a certificate issued under subsection (3) if—
 - (a) the certificate was issued in error or granted in consequence of false or misleading information; or

- (b) the issue of the certificate was contrary to law.
- (6) The holder of a certificate that is cancelled must deliver the certificate to the Commissioner for Training within 7 days following demand made on the holder.

Division 5—Entitlements

Fixing of wages payable to apprentices

- **3.33(1)** The rate of wage payable to an apprentice is—
 - (a) if an award or industrial agreement specifically provides for the rate of wage payable to an apprentice in the calling in the establishment in which the apprentice is employed—the applicable rate so provided; or
 - (b) if there is no such rate of wage—the rate of wage that is the percentage, fixed by the Industrial Commission, of the rate of wage for ordinary time of a tradesperson engaged in the calling in the establishment in which the apprentice is employed, being the percentage so fixed in respect of an apprentice of the same class or description as the apprentice in question.
- (2) On application made to it by an authorised person, or of its own motion, the Industrial Commission, by its order, may fix a percentage of the rate of wage for ordinary time of a tradesperson engaged in a calling as the means of calculating the rate of wage payable to an apprentice in the calling, and may so order—
 - (a) in respect of all apprentices in a calling, or at large, or in respect of apprentices or a class of apprentice specified in the order;
 - (b) by reference to—
 - (i) the year of apprenticeship; or
 - (ii) the stage of training of the apprentice; or
 - (iii) such other factors as the Industrial Commission considers appropriate.
 - (3) On an application made for a rate of wage for apprentices—

- (a) subject to paragraph (b), the applicant that has an interest in an apprenticeship calling to which the application relates may include in the application any other apprenticeship calling in which the applicant has not an interest;
- (b) the Industrial Commission may direct that—
 - (i) an apprenticeship calling included in the application be excluded from the application; or
 - (ii) an apprenticeship calling not included in the application be included in the application;

and give such further directions in relation to the application as it considers appropriate.

- (4) If a rate of wage of an apprentice is to be calculated by reference to a year of apprenticeship or a stage of training, and a year of apprenticeship or period of apprenticeship is extended or reduced under this Act in a particular case—
 - (a) in the case of an extension—the apprentice concerned is not entitled to a higher rate of wage calculated by reference to a year of apprenticeship or stage of training until expiry of the extension;
 - (b) in the case of a reduction—the apprentice concerned, on successfully completing the year or period of apprenticeship as so reduced, is entitled to a rate of wage as if he or she had successfully completed the full year or period of apprenticeship.

(5) If—

- (a) an apprenticeship calling is not a calling governed by an award or industrial agreement; or
- (b) an apprentice is in employment to which no award or industrial agreement applies;

the State Training Council must determine the award or industrial agreement, and a tradesperson's calling to which it applies, to be used for calculating the rate of wage of an apprentice in that apprenticeship calling or that employment and thereupon a rate of wage calculated under subsection (1)(b) by reference to the award or industrial agreement so determined is the rate of wage payable to the apprentice.

Fixing of other entitlements of apprentices

- **3.34(1)** Subject to this Act, an apprentice is entitled to the same conditions of employment as those fixed by the award or industrial agreement applicable to employees in the establishment in which the apprentice is employed.
- (2) Where the State Training Council has determined under section 3.33(5) an award or industrial agreement and the tradesperson's calling to which it applies for the purposes of that subsection, the conditions of employment of apprentices affected by the determination are as provided for in that award or industrial agreement.
- (3) Where an award or industrial agreement provides for the payment of an allowance to a tradesperson in a calling in addition to wages—
 - (a) if it is not provided in the award or agreement that the allowance is taken to be part of the tradesperson's wages—an apprentice in the calling is entitled to be paid the allowance in full by the apprentice's employer;
 - (b) if it is provided in the award or agreement that the allowance is taken to be part of the tradesperson's wages—an apprentice in the calling is entitled to be paid by the apprentice's employer the percentage of that allowance which the apprentice's wages are of the tradesperson's wages, the wages in each case being exclusive of any allowances.
- (4) Where an award or industrial agreement provides for the payment of an allowance to a tradesperson in a calling, which is to be assessed at a stated proportion of the person's wages, whether or not the award or industrial agreement provides that such allowance is taken to be part of the person's wages, an apprentice in the calling is entitled to be paid by the apprentice's employer the percentage of that allowance which the apprentice's wages are of the tradesperson's wages, the wages in each case being exclusive of any allowances.
- (5) On application made to it by an authorised person the Industrial Commission, by its order, may fix allowances that are different from those in an award or industrial agreement applicable to an apprentice and any such order while it subsists, supersedes any provision relating to allowances of the award or industrial agreement so far as the apprentice's entitlement to an

allowance is concerned.

- (6) Where there is no provision in an award or industrial agreement providing for the maximum accumulation of annual leave entitlements by a tradesperson in a calling, an apprentice in the calling is entitled to accumulate a maximum of 40 days annual leave entitlements.
- (7) Annual leave must be granted by an employer and taken by an apprentice at such time as is convenient to the employer but not later than 3 months after they become due except where the employer and apprentice agree to defer the taking of annual leave.
- (8) Unless the employer and apprentice otherwise agree, the employer must give to the apprentice at least 14 days notice of the date on and from which the apprentice's annual leave is to be taken.
- (9) If there is disagreement between an employer and an apprentice on any matter arising out of subsection (7) or (8), the State Training Council, on application made by either of them, is to determine the matter in dispute and that determination is final and binding on the employer and the apprentice.
- (10) Except in the case of termination of the employment of an apprentice, an employer must not offer and an apprentice must not accept money in lieu of annual leave.

Superannuation entitlements of apprentices

- **3.35(1)** Where an award or industrial agreement provides for an employer to make contribution on behalf of a tradesperson in a calling to an approved occupational superannuation scheme or fund, the employer of an apprentice in the calling must make a contribution on behalf of an eligible apprentice to an approved occupational superannuation scheme or fund—
 - (a) at a level required by the relevant award or industrial agreement; and
 - (b) in accordance with such award or agreement.
- (2) An employer who contravenes subsection (1) commits an offence against this Act and is liable to a penalty not exceeding 40 penalty units.
 - (3) If a person convicted of an offence against this Act that consists in a

failure to comply with subsection (1) persists in that failure, that person commits a continuing offence, which may be charged in one complaint, from time to time, in respect of any period, and is liable to a penalty not exceeding 2 penalty units for each day during which the failure continues.

- (4) An employer whose contribution to an approved occupational superannuation scheme or fund is at a level required by any relevant award or industrial agreement, but to such a scheme or fund other than that required by the award or agreement, does not commit the offence defined in subsection (1) and is not liable to be dealt with as for an offence, unless the employer has knowingly failed to comply in that respect with the award or agreement.
- (5) For the purposes of this section, if the Industrial Commission has made a determination and order under the *Industrial Relations Act 1990* in relation to an approved occupational superannuation scheme or fund as the one to which an award or industrial agreement requires contribution to be made, an employer who fails to make such contribution in accordance with such determination and order is taken to fail to make such contribution in accordance with such award or agreement, whether or not the order was directed to that employer.
- (6) The Industrial Magistrate before whom a defendant is convicted of an offence defined in subsection (2) or (3) may make in relation to the defendant an order that the magistrate is authorised to make under section 3.55 on application made under that section, and the provisions of that section apply and extend accordingly.

Unindentured apprentices' entitlements

3.36 A person who has not attained the age of 21 years and who is employed or used in an apprenticeship calling in contravention of section 3.10 is entitled to all the entitlements conferred by this Act on an apprentice employed in an apprenticeship calling in accordance with this Act.

Industrial Commission may order provision of tools of trade

3.37(1) On application made to it by an authorised person the Industrial Commission, by its order, may require an employer of an apprentice in an

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apprenticeship calling—

- (a) to supply the apprentice with tools of trade; or
- (b) to pay the apprentice a sum of money for the purpose of enabling the apprentice to purchase tools of trade; or
- (c) to supply the apprentice with tools of trade and to pay to the apprentice an amount for the purpose of enabling the apprentice to purchase other tools of trade.
- (2) An order made under subsection (1)(a) or (c) may contain particulars of the tools to be supplied, and the manner in which, times at which and conditions subject to which the tools are to be supplied.

Fixing of wages payable to trainees

- **3.38** (1) On application made to it by an authorised person the Industrial Commission, by its order, may fix in respect of a trainee or a classification of trainee—
 - (a) the rate of wage payable for ordinary time worked; and
 - (b) other conditions of employment.
- (2) On an application made for an order under subsection (1) in relation to a training scheme in which the applicant has an interest, the applicant may include in the application any other training scheme in which the applicant has not an interest.
- (3) On application made to it to fix a rate of wage under subsection (1) the Industrial Commission may fix a rate—
 - (a) by reference to a rate of wage payable under an award or industrial agreement to a classification of employee that the Industrial Commission considers appropriate, or by reference to a percentage of such a rate; or
 - (b) by reference to—
 - (i) the stage of training of the trainee or classification of trainee; or
 - (ii) such other factor as the Industrial Commission considers

appropriate.

- (4) On application made to it to fix conditions, other than a rate of wage, under subsection (1) the Industrial Commission may fix conditions—
 - (a) by reference to conditions provided for by an award or industrial agreement in respect of a classification of employee that the Industrial Commission considers appropriate; or
 - (b) by reference to conditions prescribed by the *Industrial Relations Act 1990*; or
 - (c) by reference to such other criteria as the Industrial Commission considers appropriate.
- (5) Where the Industrial Commission, in respect of a trainee or classification of trainee, has, under subsection (1), fixed the rate of wage payable for ordinary time worked, or other conditions of employment, the rate or other conditions so fixed—
 - (a) is the minimum rate of wage payable; or
- (b) are the minimum conditions applicable;to the trainee or classification of trainee concerned.

Superannuation entitlements due to trainees

- **3.39(1)** Where an award or industrial agreement provides for an employer to make contribution on behalf of a trainee to an approved occupational superannuation scheme or fund, the employer must make a contribution on behalf of an eligible trainee to an approved occupational superannuation scheme or fund—
 - (a) at a level required by the relevant award or industrial agreement; and
 - (b) in accordance with such award or agreement.
- (2) An employer who fails to comply with subsection (1) commits an offence against this Act and is liable to a penalty not exceeding 40 penalty units.
 - (3) If a person convicted of an offence against this Act that consists in a

failure to comply with subsection (1) persists in that failure, that person commits a continuing offence, which may be charged in one complaint, from time to time, in respect of any period, and is liable to a penalty not exceeding 2 penalty units for each day during which the failure continues.

- (4) An employer whose contribution to an approved occupational superannuation scheme or fund is at a level required by any relevant award or industrial agreement, but to such a scheme or fund other than that required by the award or agreement, does not commit the offence defined in subsection (1) and is not liable to be dealt with as for an offence, unless the employer has knowingly failed to comply in that respect with the award or agreement.
- (5) For the purposes of this section, if the Industrial Commission has made a determination and order under the *Industrial Relations Act 1990* in relation to an approved occupational superannuation scheme or fund as the one to which an award or industrial agreement requires contribution to be made, an employer who fails to make such contribution in accordance with such determination and order is taken to fail to make such contribution in accordance with the award or agreement, whether or not the order was directed to that employer.
- (6) The Industrial Magistrate before whom a defendant is convicted of an offence defined in subsection (2) or (3) may make in relation to the defendant an order that the magistrate is authorised to make under section 3.55 on application made under that section and the provisions of that section apply and extend accordingly.

Entitlements due to trainees other than under agreement

- **3.40** A person in relation to whom a training agreement has not been executed as required by section 3.28 who is training—
 - (a) under a training scheme approved by the State Training Council under section 3.23; and
 - (b) under conditions that are substantially those which would be specified in a training agreement;

is entitled to all the entitlements conferred by this Act on a trainee who is training under a training agreement duly executed.

Division 6—General provisions

Effect of death or retirement of a partner

- **3.41(1)** An indenture by which a person is apprenticed to partners or a training agreement by which a person is bound to partners is not determined merely because of the death or retirement of a partner but is to be taken to be assigned to the surviving or continuing partner or partners.
- (2) Where a partnership is dissolved and the parties cannot agree as to whom an indenture or a training agreement is to be assigned, the matter is to be decided by the State Training Council.

Variation of indenture or training agreement

- **3.42(1)** The covenants, terms and conditions contained in an indenture or a training agreement may be varied by agreement between the employer, the apprentice or trainee and, if the apprentice or trainee is a minor, his or her guardian in accordance with this section.
- (2) A variation of the covenants, terms and conditions contained in an indenture or a training agreement is void and of no effect unless—
 - (a) a form of variation of indenture or training agreement approved by the State Training Council has been completed and signed by the employer, the apprentice or trainee and, if the apprentice or trainee is a minor, his or her guardian, and lodged with the State Training Council; and
 - (b) the State Training Council approves of the variation and signs the variation of indenture or training agreement form.
- (3) On and from the day that the State Training Council signs the variation of indenture or training agreement form, the covenants, terms and conditions contained in the indenture or training agreement are to be taken as varied in accordance with the terms of the variation of indenture or training agreement.

(4) The State Training Council—

(a) must give written notification of the decision of the council in

respect of a variation under subsection (2); and

(b) where the council has approved of the variation and has signed the variation of indenture or training agreement form—must give copies of the form;

to the employer and the apprentice or trainee and, if the apprentice or trainee is a minor, his or her guardian.

Temporary inability of employer to provide work

- **3.43(1)** An employer who is temporarily unable to provide work to employ fully an apprentice or trainee during ordinary working time may apply in writing to the State Training Council for permission—
 - (a) to stand down the apprentice or trainee; or
 - (b) to employ the apprentice or trainee for less than the full working time per week or per month at a remuneration in accordance with the time worked proportionate to the relevant weekly wage of the apprentice or trainee;

and the council must determine the matter.

- (2) Where the State Training Council grants permission under subsection (1) it may impose such conditions as it thinks fit.
- (3) Unless the State Training Council determines otherwise as a condition of its permission, where an apprentice or trainee is stood down or employed for less than the apprentice's or trainee's full working time with permission under subsection (1), the year of apprenticeship of the apprentice or the stage of training of the apprentice or the period of the training agreement is to be extended by the time so lost.
- (4) The State Training Council may determine that the year of apprenticeship or stage of training of the apprentice or the period of the training agreement is to be extended for a period less than the time so lost, or not extended, and may impose conditions on the apprentice or trainee.

Record to be maintained by employer

- **3.44(1)** Each employer must establish and maintain as prescribed a record containing the prescribed particulars in relation to each apprentice, probationer and trainee to whom this Act applies who is for the time being employed by the employer.
- (2) A record required to be maintained by an employer under subsection (1) must be retained for a period of 5 years after the person to whom the record relates has ceased to be employed by the employer.
- (3) An employer must produce a record maintained by the employer under subsection (1) to a person authorised under this Act to inspect the same on demand being made by that person.

Training record

- **3.45(1)** The State Training Council may, for the purposes of this section, from time to time issue to an apprentice or trainee, a training record book containing instructions in respect of the completion of the book.
- (2) A person to whom a training record book is issued must maintain in it a record of his or her training and produce it to the employer from time to time in accordance with—
 - (a) the instructions contained in the book; and
 - (b) such further written instructions as the State Training Council gives to the person, from time to time.
- (3) An employer to whom a training record book is produced must make, in respect of each entry, a notation indicating whether or not the entry is correct.

A notation may be in respect of more than one entry.

(4) On being required to do so by a training consultant or welfare consultant, a person to whom a training record book is issued under subsection (1) must produce the book for inspection.

Absence from employment

- **3.46(1)** If an apprentice or a trainee is absent, other than as authorised or required by this Act, from his or her employment during the period of training required under the indenture or training agreement, the State Training Council may extend the period of apprenticeship under the indenture or the period of the training agreement or a stage of training, by the period of absence, or by a shorter period, as it thinks fit.
- (2) If the State Training Council extends a period of apprenticeship or a training agreement or a stage of training the indenture or the training agreement is to be taken as varied accordingly.

Prevention by employer of attendance by apprentice or trainee at college or class

- **3.47** An employer must not directly or indirectly—
 - (a) obstruct, or attempt to obstruct, or interfere with an apprentice or trainee in attending a college or school at any time when the apprentice or trainee is required to attend the college or school; or
 - (b) prejudice the employment of an apprentice or trainee, or place an apprentice or trainee at a disadvantage—
 - (i) because of his or her attending or attempting to attend; or
 - (ii) to discourage him or her from attending;

a college or school at any time when the apprentice or trainee is required to attend the college or school.

Discipline

- **3.48(1)** If the State Training Council has reason to believe—
 - (a) on complaint made to it by an employer; or
- (b) of its own motion, or on information from any other source; that an apprentice or trainee misconducts himself or herself in a manner prescribed by subsection (3), it may by its order, subject to this section—
 - (c) cancel the indenture or training agreement; or

- (d) suspend the indenture or training agreement; or
- (e) direct the apprentice or trainee to pay an amount not exceeding the equivalent of 4 penalty units; or
- (f) reprimand the apprentice or trainee.
- (2) The State Training Council must not make an order under subsection (1) unless—
 - (a) it has first given the apprentice or trainee an opportunity to present a case as to why an order should not be made; and
 - (b) whether or not the apprentice or trainee takes the opportunity referred to in paragraph (a), it is satisfied that the circumstances warrant the making of an order under subsection (1).
- (3) Misconduct in respect of which action may be taken under subsection (1) occurs if the apprentice or trainee—
 - (a) wilfully disobeys a lawful order of the employer; or
 - (b) is dishonest or guilty of gross misbehaviour; or
 - (c) is absent from the employer's service without the consent of the employer or the authority of this Act; or
 - (d) fails to attend a college or school that the apprentice or trainee is required to attend under this Act; or
 - (e) is absent from classes which the apprentice or trainee is required to attend under this Act, without the permission of the director or principal first obtained; or
 - (f) fails to return any correspondence papers required to be returned in connection with a course of instruction; or
 - (g) fails to make adequate progress with respect to a stage of the course of instruction that the apprentice or trainee is required to undertake; or
 - (h) fails to maintain a training record book, or fails to produce it to the employer, as required by section 3.45; or
 - (i) on being required to do so by a training consultant or welfare consultant, fails to produce the training record book for inspection; or

- (j) fails to make satisfactory progress in the theoretical or practical knowledge appropriate to the apprenticeship calling or traineeship in question.
- (4) If any apprentice or trainee is ordered to pay an amount under subsection (1), the State Training Council must direct whether it is to be paid directly by the apprentice or trainee or deducted by the employer from the wages of the apprentice or trainee.
- (5) All amounts ordered under subsection (1) to be paid are to be paid to and are the property of the Corporation.
- (6) Cancellation of an indenture or a training agreement under subsection (1) has no effect until the expiry of 4 weeks, or such shorter period as the State Training Council may direct in a particular case, following the day on which the council orders the cancellation.
- (7) An order made under this section has effect in law according to its terms and must be given effect by all persons concerned.
- **(8)** A direction given under this section must be complied with by the person to whom it is addressed.

Cancellation of indenture or training agreement on request

- **3.49** The State Training Council may cancel an indenture or a training agreement on receipt by it of a request to do so made by—
 - (a) the employer; or
 - (b) the apprentice or trainee, and, if the apprentice or trainee is a minor, his or her guardian.

Provision of tools of trade

- **3.50(1)** In this section—
- "apprentice" includes a person who has not attained the age of 21 years and who is engaged in an apprenticeship calling in contravention of section 3.10.
- (2) An employer of an apprentice or a trainee must provide the apprentice or trainee with such tools of trade as are required—

- (a) by order made under this Act; or
- (b) by a training agreement;

to be so provided.

- (3) On conviction of an employer for a failure to comply with subsection (2) an Industrial Magistrate, in addition to or in lieu of imposing a penalty, is to order the employer in question—
 - (a) to provide the apprentice or trainee in question with such tools of trade to which subsection (2) relates as have not been provided; or
 - (b) to pay to the court an amount that is equivalent to the cost of such tools of trade to which subsection (2) relates as have not been provided.
- (4) In the absence of action under subsection (3), on application made by—
 - (a) an apprentice or a trainee; or
 - (b) a guardian of an apprentice or a trainee who is a minor; or
 - (c) an industrial organisation of employees on behalf of an apprentice or a trainee;

for provision of tools of trade as prescribed by subsection (2), an Industrial Magistrate may make against the employer in question an order that the magistrate could have made under subsection (3).

- (5) An order made under subsection (3) or (4) may be expressed in the alternative so that the employer may elect how the order will be complied with.
- (6) An order made under subsection (3) or (4) that is not complied with immediately may be filed in a court having jurisdiction in action for debt in the amount of the sum required by the order to be paid as cost of tools of trade and costs of the proceedings before the Industrial Magistrate (if so ordered to be paid), and thereupon the order may be enforced as an order of that court for payment of that amount.
- (7) An amount paid to the court under an order under subsection (3) or (4) is to be paid by the court to the apprentice or trainee for whose benefit the order was made.

Offences concerning employment of apprentices or trainees

- **3.51(1)** In this section—
- "apprentice" includes a person who has not attained the age of 21 years and who is engaged in an apprenticeship calling in contravention of section 3.10.
 - (2) A person must not—
 - (a) employ or use or attempt to employ or use;
 - (b) authorise or permit another person to employ or use;

an apprentice in an apprenticeship calling or a trainee for the purposes of a training scheme at a rate of wage lower than that to which the apprentice or trainee is entitled under this Act.

- (3) A person must not fail to pay or provide to an apprentice or a trainee any entitlement (other than a wage) due to the apprentice or trainee under this Act.
 - (4) A person must not—
 - (a) employ or attempt to employ;
 - (b) authorise or permit another person to employ;

any apprentice or trainee in excess of the number that the person is authorised under this Act to employ.

Recovery of moneys due and payable to, or on account of apprentice or trainee

- **3.52(1)** In this section—
- "apprentice" includes a person who has not attained the age of 21 years and who is engaged in an apprenticeship calling in contravention of section 3.10.
- (2) On conviction of an employer for failure to pay moneys due and payable to, or on account of, an apprentice or a trainee—
 - (a) for work performed by the apprentice or trainee; or
 - (b) for any holiday or leave by way of annual holidays; or

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- (c) for sick leave; or
- (d) for any other reason;

an Industrial Magistrate is to order the employer to pay to, or on account of, the apprentice or trainee such amount as the magistrate finds to be due and payable to, or on account of, the apprentice or trainee.

- (3) An Industrial Magistrate may make such an order—
 - (a) in addition to or in lieu of imposing a penalty; and
 - (b) despite any provision (express or implied) of an agreement to the contrary; and
 - (c) subject to such terms and conditions as the magistrate considers just.
- (4) A complaint for recovery of moneys referred to in subsection (2) may be made—
 - (a) if the apprentice or trainee concerned is in employment with the employer concerned when the complaint is made—in respect of moneys that have become due and payable within 4 years preceding the making of the complaint;
 - (b) if the apprentice or trainee concerned has ceased employment with the employer concerned when the complaint is made—in respect of moneys that have become due and payable within 4 years preceding the time when the apprentice or trainee ceased such employment.
- (5) Despite subsection (4) an employer's liability on a conviction referred to in subsection (2)—
 - (a) in respect of an apprentice or trainee who ceased employment with the employer in the 12 months preceding the commencement of this Act—does not extend to moneys that became due and payable earlier than 12 months before such cessation;
 - (b) in respect of an apprentice or trainee who is in employment with the employer at the commencement of this Act—does not extend to moneys that became due and payable earlier than 12 months before such commencement.
 - (6) In the absence of action under subsection (2), on application made

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by—

- (a) an apprentice or a trainee; or
- (b) a guardian of an apprentice or a trainee who is a minor; or
- (c) an industrial organisation of employees on behalf of an apprentice or a trainee;

for moneys due and payable as prescribed by subsection (2), an Industrial Magistrate may make against the employer in question an order that the magistrate could have made under subsection (3).

- (7) The provisions of this section apply in respect of an application under subsection (6) as if it were a complaint for recovery of moneys and for that purpose a reference in this section to a complaint, or a conviction for failure to pay moneys, is a reference to such an application.
- (8) An order made under subsection (2) or (6) that is not complied with immediately may be filed in a court having jurisdiction in action for debt in the amount required by the order to be paid and costs of the proceedings before the Industrial Magistrate (if so ordered to be paid), and thereupon the order may be enforced as an order of that court for payment of such amount and costs.

Payment to training consultant or industrial inspector of money due to apprentice or trainee

3.53(1) In this section—

- "apprentice" includes a person who has not attained the age of 21 years and who is engaged in an apprenticeship calling in contravention of section 3.10.
- (2) On demand made by a training consultant or an industrial inspector in that behalf, an employer, subject to subsection (4), must pay to the training consultant or industrial inspector the amount due, as is referred to in subsection (3), to an apprentice or a trainee and unpaid—
 - (a) in the case where the apprentice's or trainee's employment with the employer has terminated—in respect of the period of 4 years last preceding the date of termination;

- (b) in any other case—in respect of the period of 4 years last preceding the date of the demand.
- (3) On demand duly made by a training consultant or an industrial inspector an employer must pay to the training consultant or industrial inspector—
 - (a) in respect of any apprentice or trainee, the amount due and payable to, or on account of, the apprentice or trainee, and unpaid;
 - (b) in respect of any eligible apprentice or trainee, an amount comprised of—
 - (i) the amount of contribution payable by the employer to an approved occupational superannuation scheme or fund under any relevant award or industrial agreement on behalf of the apprentice or trainee, and unpaid; and
 - (ii) an amount based on the return that would have accrued in respect of such contribution had it been duly paid to such scheme or fund.
- (4) A demand, such as referred to in subsection (2), must not be made, and if made need not be complied with, if the demand would relate, or relates, to an amount of unpaid wages that had become due and payable at a time such that an order for their recovery could not be made on an application under section 3.52.

Accounting for moneys paid to training consultant or industrial inspector

- **3.54(1)** A training consultant or industrial inspector to whom an amount is paid on demand under section 3.53 is to give the payer a receipt for the amount immediately on payment.
- (2) The receipt of a training consultant or industrial inspector for such amount is a full discharge to the employer in question for the amount specified in the receipt.
- (3) Subject to subsections (4) and (5), a training consultant or industrial inspector to whom an amount is paid on demand under section 3.53 is to account for the amount as follows—

- (a) if the amount is in respect of—
 - (i) an employer's contribution to an approved occupational superannuation scheme or fund to the credit of an eligible apprentice or trainee, which was unpaid; or
 - (ii) an amount referred to in section 3.53(3)(b)(ii); it is to be paid—
 - (iii) to an approved occupational superannuation scheme or fund under any award or industrial agreement relevant to the apprentice's or trainee's employment as an eligible apprentice or trainee; or
 - (iv) in a case to which subsection (5)(b) applies, to a superannuation scheme or fund nominated by the apprentice or trainee;
- (b) if the amount is not an amount referred to in paragraph (a)—it is to be paid to the apprentice or trainee to whose credit it was paid to the training consultant or industrial inspector.
- (4) If at the end of 30 days following receipt of an amount paid on demand under section 3.53 a training consultant or industrial inspector has not accounted for the amount as prescribed by subsection (3), the training consultant or industrial inspector is to pay the amount immediately to the Director-General to the credit of the approved occupational superannuation scheme or fund or, as the case may be, the apprentice or trainee.
- (5) Despite subsection (3), if an apprentice or trainee to whose credit an amount referred to in subsection (3)(a), is paid to a training consultant or industrial inspector is no longer in employment with the employer on whom the demand was made, the training consultant or industrial inspector is to account for the amount as follows—
 - (a) if the amount is less than the amount of total benefits that may revert to the apprentice or trainee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth—the moneys are to be paid—
 - (i) to the apprentice or trainee; or
 - (ii) to a superannuation scheme or fund nominated by the

apprentice or trainee;

- (b) if the amount equals, or is more than, the amount of total benefits that may revert to the apprentice or trainee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth—the amount is to be paid to a superannuation scheme or fund nominated by the apprentice or trainee.
- (6) If at the end of 30 days following receipt of an amount referred to in subsection (3)(a), in a case to which subsection (5) applies, the training consultant or industrial inspector has not accounted for the amount as prescribed by subsection (5), the training consultant or industrial inspector is to pay the amount immediately to the Director-General to be disposed of as prescribed by subsection (5).

Recovery of unpaid superannuation contribution due to apprentice or trainee

3.55(1) In this section—

- "apprentice" includes a person who has not attained the age of 21 years and who is engaged in an apprenticeship calling in contravention of section 3.10.
 - (2) On application made by—
 - (a) a training consultant or industrial inspector; or
 - (b) an apprentice or a trainee; or
 - (c) a guardian of an apprentice or a trainee who is a minor; or
 - (d) an industrial organisation of employees on behalf of an apprentice or a trainee;

an Industrial Magistrate may order an employer who has failed to pay contribution to an approved superannuation scheme or fund on behalf of any eligible apprentice or trainee, as required by a relevant award or industrial agreement to pay—

- (e) the amount of contribution that is unpaid; and
- (f) an amount that, in the opinion of the Industrial Magistrate, is just and fair, based on the return that would have accrued in respect of such

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contribution had it been duly paid to such scheme or fund.

- (3) Subject to subsection (4), an order under subsection (2) requires payment of the amount specified in the order to an approved occupational superannuation scheme or fund in accordance with the relevant award or industrial agreement.
- (4) If an order under subsection (2) relates to payment of contribution on behalf of a person who is no longer an apprentice or trainee of the person required to make payment under the order—
 - (a) if the amount ordered to be paid on behalf of the former apprentice or trainee is less than the amount of total benefits that may revert to the former apprentice or trainee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth—the order may require the person liable under the order to pay the amount to the former apprentice or trainee, or to a superannuation scheme or fund nominated by the former apprentice or trainee:
 - (b) if the amount ordered to be paid on behalf of the former apprentice or trainee equals, or is more than, the amount of total benefits that may revert to the former apprentice or trainee in accordance with the *Occupational Superannuation Standards Act 1987* of the Commonwealth—the order may require the person liable under the order to pay the amount to a superannuation scheme or fund nominated by the former apprentice or trainee.
- (5) On application for an order under subsection (2) an Industrial Magistrate may order payment on such terms as the magistrate thinks fit.
- (6) An order made under subsection (2) that is not complied with immediately may be filed in a court having jurisdiction in action for debt in the amount required by the order to be paid and costs of the proceedings before the Industrial Magistrate (if so ordered to be paid), and thereupon the order may be enforced as an order of that court for payment of such amount and costs.

Employer to be informed of application

3.56 An application made under section 3.50(4), 3.52(6) or 3.55(2) to an Industrial Magistrate must not proceed to hearing and determination unless notice of the time and place for hearing has been given to the employer concerned, but if the employer does not take the opportunity so given to be heard on the application, the matter may proceed to determination without further reference to the employer.

PART 4—MISCELLANEOUS PROVISIONS

Act binds Crown

- **4.1**(1) This Act binds the Crown.
- (2) The Crown is not liable to prosecution for an offence against this Act.

Act prevails in event of inconsistency

- **4.2(1)** Despite any other Act, a minor is authorised by this Act—
 - (a) to be on any part of premises for the purpose of—
 - (i) performing duties as an employee of the owner of the premises or the occupier of that part of the premises; or
 - (ii) performing duties in the conduct of a lawful business; and
 - (b) to be on any other part of the premises—
 - (i) that gives access to the part where such duties are being, or are to be, performed; or
 - (ii) on which the minor has a need to be in connection with performing such duties.
- (2) This Act prevails over any provision of an award or industrial agreement that is inconsistent with this Act, whether the provision was made before, or is made after, the commencement of this Act.

Exemptions

- **4.3(1)** Any person or class of person may be exempted by order in council from the operation of any provisions of this Act, and for so long as the order remains in force the person or class of person to whom it relates is exempt as specified in the order.
- (2) Section 28A of the *Acts Interpretation Act 1954* (tabling of regulations) applies to an order in council made under subsection (1) as if it were a regulation.

Conflict of interest

- **4.4(1)** If a person who is—
 - (a) a member of the Commission or any committee of the Commission; or
 - (b) a member or manager of a corporation or unincorporated body under section 2.29; or
 - (c) otherwise engaged in giving effect to this Act;

has a personal or pecuniary interest that appears likely to conflict, or capable of conflicting, with the proper exercise of the person's discretion or the proper performance of the person's duty in respect of any matter under this Act, the person must—

- (d) disclose that interest to; and
- (e) take no action in relation to the matter, except as authorised by;

the Minister, in the case of a member of the Commission or a committee, or a member or manager of a corporation or body, or the Director-General in any other case.

- (2) The Minister or Director-General may direct a person who has such an interest to take specified action with a view to resolving any such conflict.
- (3) A person to whom a direction under subsection (2) is given must either comply with the direction so as to resolve the possible conflict or cease to hold the position whereby the possible conflict arises.

Holders of office to act honestly and with propriety

- **4.5**(1) This section applies to—
 - (a) a member of the Commission or any committee; and
 - (b) a member or manager of a corporation or unincorporated body under section 2.29; and
 - (c) other persons engaged in giving effect to this Act.
- (2) A person must at all times act honestly in exercise of powers, and performance of duties, that he or she has by virtue of being a person to whom this section applies.
- (3) A person to whom this section applies must not make improper use of the office or position held for the purposes of this Act to gain, directly or indirectly, an advantage for himself, herself or any other person, or to cause detriment to the Commission, committee, corporation or body, as the case may be.
- (4) A person to whom this section applies, or at any time applied, must not make improper use of information acquired by virtue of the office or position held for the purposes of this Act to gain, directly or indirectly, an advantage for himself, herself or any other person or to cause detriment to the Commission, committee, corporation or body, as the case may be.

Protection of name of Commission and Corporation

- **4.6** An association of persons must not have as its name, or part of its name—
 - (a) the name of the Commission or Corporation; or
 - (b) an expression that closely resembles the name of the Commission or Corporation;

except under authority of this Act or the permission in writing of the Commission or the Corporation, as the case may be.

Entry onto premises

4.7(1) The following persons—

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- a training consultant or welfare consultant;
- an industrial inspector;
- a person authorised by the State Training Council;

may at all reasonable times enter premises with the consent of the occupier or under authority of a warrant issued under section 4.8 or 4.9.

- (2) A person referred to in subsection (1) who enters premises under authority of a warrant issued under section 4.8 may—
 - (a) inspect the premises and plant and facilities on the premises and work being performed on the premises; and
 - (b) require any person found on the premises to state in full details of the person's name and the address of his or her place of residence and, if it is suspected on reasonable grounds that a name or address stated is not correct, to produce evidence of the correctness of the person's name or place of residence; and
 - (c) question (alone or in the presence of others) any person found on the premises; and
 - (d) require production then and there, or as otherwise required, of any document required by this Act to be kept that is in the occupier's possession or control, and inspect, examine, copy and take extracts from such a record or document that is produced.
- (3) A person referred to in subsection (1) who enters premises under authority of a warrant issued under section 4.9 may exercise any power referred to in subsection (2) and may seize as prescribed by section 4.9 anything found on the premises that would afford evidence of commission of an offence against this Act.
- (4) At least 2 members of the State Training Council of whom one is the Commissioner for Training may at all reasonable times enter premises where a calling is carried on, with the consent of the occupier of the premises or under authority of a warrant issued under section 4.8.
- (5) The persons referred to in subsection (4) who enter premises under authority of a warrant issued under section 4.8—
 - (a) may inspect the premises and plant and facilities on the premises; and

- (b) may question any person found on the premises in respect of training of persons to whom this Act applies.
- (6) A person who enters premises with the consent of the occupier may, if authorised by the consent of the occupier, exercise on the premises any power that the person could exercise under authority of a warrant, without proceeding to obtain a warrant.

Monitoring warrant

- **4.8(1)** A person referred to in section 4.7(1) or (4) may make application to an Industrial Magistrate for a warrant under this section in respect of particular premises.
- (2) If, on consideration of the application and such further information (furnished orally or in writing) as the magistrate requires as to the grounds on which the warrant is sought, the magistrate is satisfied that it is reasonable that the applicant should have access to the premises to ascertain—
 - (a) whether the requirements of this Act or any order, direction or requisition made or issued under this Act or the provisions of—
 - (i) an award or industrial agreement on matters relevant to this Act; or
 - (ii) any indenture or training agreement; are being complied with; or
 - (b) the facilities for training available in the premises; or
 - (c) the work practices prevailing in the premises;

the magistrate may issue a warrant under this section.

- (3) The warrant must—
 - (a) authorise the applicant, with such assistance and by such reasonable force as is necessary for the purpose—
 - (i) to enter the premises; and
 - (ii) to exercise the powers that the applicant is authorised by section 4.7(2) or (5) to exercise; and

- (b) state the purpose for which the warrant is issued; and
- (c) state whether the entry is authorised to be made by day or night, or during specified hours of day or night; and
- (d) specify the day (not more than one month following issue of the warrant) on which the warrant ceases to have effect.

Offence related warrant

- **4.9(1)** A person referred to in section 4.7(1) may make application, by information on oath, to an Industrial Magistrate for a warrant under this section in respect of particular premises.
- (2) If, on consideration of the application and such further information (furnished orally or by affidavit) as the magistrate requires as to the grounds on which the warrant is sought, the magistrate is satisfied there are reasonable grounds for suspecting that there is on the premises evidence of commission of an offence against this Act, the magistrate may issue a warrant under this section.

(3) The warrant must—

- (a) authorise the applicant, with such assistance and by such reasonable force as is necessary for the purpose—
 - (i) to enter the premises; and
 - (ii) to exercise the powers that the applicant is authorised by section 4.7(2) to exercise; and
 - (iii) to seize the evidence; and
- (b) state the purpose for which the warrant is issued; and
- (c) state whether the entry is authorised to be made by day or night, or during specified hours of day or night; and
- (d) specify the day (not more than one month following issue of the warrant) on which the warrant ceases to have effect.
- (4) If, in the course of searching premises under authority of a warrant issued under this section—
 - (a) there is found anything, other than the evidence referred to in

- subsection (2), that would afford evidence of commission of an offence against this Act; and
- (b) the applicant for the warrant believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating an offence against this Act;

the applicant may seize the thing.

Provisions concerning exercise of powers and seizure

- **4.10(1)** A person seeking to exercise powers under authority of a warrant may call to his or her aid—
 - (a) any person of relevant competence; and
 - (b) any other person having duties similar to those of such first-mentioned person, or a police officer, if obstruction or hindrance to such exercise is met or is reasonably apprehended.
- (2) A police officer acting in aid of a person under subsection (1) is acting in execution of duty.
- (3) A person who has seized evidence or other thing under authority of a warrant—
 - (a) may keep the material seized for 60 days, or, if a prosecution for an offence against this Act to which the material is relevant is commenced within that period, until the completion of the prosecution proceedings and of any appeal from the decision in the proceedings; and
 - (b) if the material seized is a document—must allow it to be inspected and copied at any reasonable time by a person who would be entitled to inspect it, if it had not been seized.
- (4) A person who has seized evidence or other thing with consent of an occupier of premises may retain and deal with the material seized in accordance with the terms of the consent.

Duty to protect interests of employees to whom Act applies

- **4.11** A person referred to in section 4.7(1)—
 - (a) must, as soon as is practicable, report to the State Training Council every contravention of a provision of this Act that the person finds or that comes to the person's knowledge; and
 - (b) must take all practical steps necessary to ensure the well-being and adequate training of apprentices, trainees and other persons in employment to whom this Act applies.

Offences of obstruction and failing to answer questions

- **4.12(1)** A person must not—
 - (a) obstruct, hinder, assault, abuse, insult, intimidate, or attempt to do so, a person lawfully acting in exercise of a power referred to in section 4.7 or performance of a duty referred to in section 4.11;
 - (b) refuse or fail to answer truthfully a question put to him or her in lawful exercise of a power referred to in section 4.7 or performance of a duty referred to in section 4.11, unless the person has a lawful excuse.
- (2) It is a lawful excuse for refusal or failure by a person to answer a question if a truthful answer would tend to incriminate the person.

Attendance at investigation by Commission or State Training Council

- **4.13(1)** The chairperson of the Commission or the Commissioner for Training, by written notice, may require a person who is a party to an indenture or a training agreement to attend before the Commission or the State Training Council for the purpose of its investigation and determination of any matter concerning the relevant apprenticeship or the training agreement.
- (2) A person who attends before the Commission or the State Training Council may be required—
 - (a) to answer any question; and
 - (b) to produce any document or writing in the person's possession or

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control;

that the Commission or council considers relevant to the investigation.

- (3) A person to whom a notice is given under subsection (1) must comply with the notice, except for good and sufficient reason disclosed to the chairperson of the Commission or Commissioner for Training who issued the notice before the day appointed by the notice for the person's attendance.
- (4) A person who attends before the Commission or State Training Council for the purpose of its investigation of any matter—
 - (a) must answer any question put to the person, unless he or she has a lawful excuse; and
 - (b) must produce to the Commission or council any document required of the person unless he or she has a lawful excuse.
- (5) It is a lawful excuse for failure by a person to answer a question if an answer would tend to incriminate the person.
- (6) It is a lawful excuse for failure by a person to produce a document if production of the document would tend to incriminate the person.
- (7) For the purpose of an investigation by the Commission or the State Training Council, the chairperson of the Commission or Commissioner for Training, or a person designated by either of them, may administer an oath to any person attending before the Commission or council.

Destruction etc. of documents

- **4.14** A person must not wilfully or negligently destroy, deface, alter, take or interfere with—
 - (a) an indenture or assignment of an indenture; or
 - (b) a training agreement; or
 - (c) an award or a certificate of a State college or a vocational education and training establishment that is recognised under this Act as an approved training organisation; or
 - (d) any document made or completed for the purpose of this Act;

unless the person has lawful authority or excuse.

Protection of confidentiality

- **4.15(1)** Except as provided by subsection (2), a member of the Commission or any committee constituted for the purposes of this Act, or of the State Training Council or other person engaged in giving effect to this Act must not disclose to any person information acquired by the member or other person in performance of functions or exercise of powers under this Act.
 - (2) Subsection (1) does not apply to disclosure of information—
 - (a) for the purposes of this Act; or
 - (b) with the authorisation of the Director-General; or
 - (c) ordered by a court or tribunal constituted according to law to be disclosed for the purposes of proceedings before it; or
 - (d) required by law to be disclosed.

General offence provision

- **4.16(1)** A person who contravenes—
 - (a) a provision of this Act; or
 - (b) an order directed to the person under this Act; or
 - (c) a direction addressed to the person under this Act; or
 - (d) a requirement made of the person under this Act, unless he or she has a lawful excuse;

commits an offence against this Act.

- (2) A person convicted of an offence against this Act is liable—
 - (a) to the penalty specifically prescribed for the offence; or
 - (b) in the absence of a penalty specifically prescribed, to a penalty of 40 penalty units.

Proceedings for offences

- **4.17(1)** Proceedings in respect of an offence defined in section 2.34 are to be taken in a summary way before justices in accordance with the *Justices Act 1886*.
- (2) Except as provided by subsection (1), proceedings in respect of an offence against this Act are to be taken in a summary way before an Industrial Magistrate.
- (3) Proceedings in respect of an offence against this Act may be instituted—
 - (a) in the case of an offence defined in section 2.34, by the director of the State college where the offence was committed or by a police officer;
 - (b) in any other case by—
 - (i) the chairperson of the Commission or the Commissioner for Training; or
 - (ii) a training consultant or an industrial inspector.

Procedural law applicable to proceedings before Industrial Magistrate

4.18 The provisions of section 18.52(2), (3) and (4) of the *Industrial Relations Act 1990* relating to proceedings generally before Industrial Magistrates apply in relation to proceedings before Industrial Magistrates for the purposes of this Act.

Representation of parties

4.19 A party to proceedings under or for the purposes of this Act may be represented in the proceedings by an agent duly appointed in writing for the purpose but, unless all parties to the proceedings agree, cannot be represented by counsel or solicitor (enrolled in Queensland or elsewhere) engaged as counsel or solicitor for those proceedings.

This section does not apply to proceedings in respect of an offence defined in section 2.34.

Evidentiary provisions

- **4.20(1)** In proceedings for the purposes of this Act—
 - (a) in the absence of evidence to the contrary, it is not necessary to prove—
 - (i) the appointment of any member of the Commission or State Training Council or of any committee constituted for the purposes of this Act or of any person appointed for the purposes of this Act; or
 - (ii) the authority of the chairperson of the Commission or of any committee constituted for the purposes of this Act, the Commissioner for Training or any person appointed for the purposes of this Act to take any action, institute any proceedings or make or give any order, direction or requirement;
 - (b) a direction given by the State Training Council under section 3.19, by Industrial Gazette notice, is to be judicially noticed;
 - (c) a signature purporting to be that of the chairperson of the Commission or of any committee constituted for the purposes of this Act, the Commissioner for Training or any person appointed for the purposes of this Act is to be taken to be the signature it purports to be until the contrary is proved;
 - (d) an entry in a register required by this Act to be kept, or a copy of or extract from the register, certified by a member of a class of person authorised by the Commission or a standing committee of the Commission, to be a true copy or extract, is evidence of the matters contained in the register;
 - (e) the absence of—
 - (i) the name of a person from a register of apprentices or trainees required by this Act to be kept; or
 - (ii) the name of a vocational education and training establishment from a register of approved training organisations required by this Act to be kept;

is evidence that—

(A) the person is not, or was not at a material time,

registered as an apprentice or a trainee under this Act; or

- (B) the vocational education and training establishment is not, or was not at a material time, an approved training organisation under this Act;
- (f) a certificate purporting to be that of a member of a class of person authorised by the Commission, or a standing committee of the Commission, that—
 - (i) a person is, or is not, or was, or was not, at a specified time registered under this Act as an apprentice or a trainee; or
 - (ii) a vocational education and training establishment is, or is not, or was, or was not at a specified time registered under this Act as an approved training organisation;

is evidence of the matters contained in the certificate;

- (g) an indenture or a training agreement is evidence of the matters contained in the indenture or agreement.
- (2) A copy signature purporting to be a facsimile of the signature of the person who is, or was, the chairperson of the Commission or of a standing committee of the Commission, appearing on any document, is to be taken—
 - (a) to be the signature of that person; and
 - (b) to have been affixed to the document by or with the authority of that person;

until the contrary is proved.

Appeal to Commission or Minister

- **4.21(1)** A person aggrieved by a decision (other than a decision of the State Training Council under section 3.34(9)) or action of a standing committee of the Commission in respect of a matter under this Act may appeal to the Commission.
- (2) An appeal under subsection (1) must be in writing lodged with the chairperson of the Commission within 21 days following the day on which written notification of the decision or action is received by the person

aggrieved.

- (3) A person aggrieved by a decision of the Commission in respect of a matter under this Act, other than a referral to an Industrial Magistrate under subsection (5), may appeal to the Minister.
- (4) An appeal under subsection (3) must be in writing lodged with the Minister within 21 days following the day on which written notification of the decision is received by the person aggrieved.
- (5) Where an appeal is duly instituted under subsection (1) or (3), the Commission or the Minister, as the case may be, may—
 - (a) hear and determine the appeal; or
 - (b) refer the matter of the appeal to an Industrial Magistrate.
- (6) An Industrial Magistrate to whom a referral is made under subsection (5) is to hear and determine the appeal.
- (7) A decision on an appeal given by the Minister or an Industrial Magistrate is final.
- (8) An appeal under this section does not operate to stay any decision or action appealed against unless the Commission or the Minister, as the case may be, directs to the contrary and all conditions imposed by such direction are complied with.
 - (9) The provisions of this section apply despite any other Act or any law.

Indemnity to persons administering Act

- **4.22(1)** The Corporation is to indemnify and keep indemnified all persons engaged in giving effect to this Act against all actions, proceedings and claims in respect of—
 - (a) acts done, or omissions made, under any provision of this Act; or
 - (b) acts done, or omissions made, in good faith and without negligence for the purposes of this Act.

Regulations may be made

- **4.23**(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—
 - (a) is required or permitted to be prescribed by this Act; or
 - (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the power to make regulations conferred by subsection (1), regulations may be made with respect to—
 - (a) applications by persons desirous of becoming apprentices, pre-vocational or pre-apprenticeship students, or trainees;
 - (b) training courses required for apprentices, pre-vocational or pre-apprenticeship students or trainees;
 - (c) the trade experience, training or work practices required to be given or observed by an employer to or in respect of an apprentice or trainee:
 - (d) the enrolment for and attendance at courses of instruction and classes forming part of those courses by apprentices in apprenticeship courses, or trainees in traineeship courses;
 - (e) the standard form of an indenture and the covenants, terms and conditions of an indenture;
 - (f) the following matters—
 - (i) applications by employees in callings that require training (other than apprentices and trainees) who are desirous of undertaking training;
 - (ii) training courses and practical experience to be undertaken by such employees;
 - (iii) practical training and work experience to be provided by employers of such employees;
 - (iv) enrolment in and attendance at training courses and classes by such employees;
 - (g) all matters concerning probation and probationers;

- (h) the period of training required for trainees, the standard form for a training agreement and the covenants, terms and conditions to be inserted therein:
- (i) the registration of apprentices and trainees and recognition of vocational education and training establishments;
- (j) the registration, variation, cancellation and assignment of indentures, and training agreements;
- (k) the registration of pre-apprenticeship students and pre-vocational students;
- (l) the effect of a certificate issued to an apprentice, or trainee after completion of an apprenticeship or other course of training and the extent to which and the purposes for which that certificate is to be recognised;
- (m) the keeping and maintenance of records by employers, apprentices and trainees;
- (n) the fees payable under this Act and the purposes for which those fees are payable, other than fees that this Act requires or permits to be otherwise determined;
- (o) the procedure to be followed at an investigation by the Commission or the State Training Council;
- (p) the fines which may be imposed on apprentices and trainees for breaches of discipline;
- (q) penalties not exceeding 4 penalty units for a contravention of the regulations;
- (r) the following matters—
 - (i) the maximum number of apprentices that may be employed by an employer in an apprenticeship calling proportionate to the number of tradespersons employed in the calling by the employer;
 - (ii) the maximum number of trainees that may be employed by an employer;
 - (iii) the variation of any such maximum number by the State

Training Council on application by an employer;

- (s) the operation of group training schemes, the training of apprentices and trainees employed by group training schemes and the conditions of employment of apprentices and trainees employed by group training schemes;
- (t) the procedure on appeal to the Minister or the Commission;
- (u) all matters required or permitted by this Act to be prescribed if no other mode of prescription is specified.

PART 5—REPEALS AND TRANSITIONAL PROVISIONS

Repeals

5.1(1) An Act specified in the first column of the following Table is repealed to the extent specified in the second column of the Table—

TABLE

Column 1 Column 2

Employment, Vocational Education and

Training Act Amendment Act 1988

Employment, Vocational Education and section 3; Parts II, IV and V;

the whole.

Training Act Amendment Act 1988 the schedule.

Dissolution of certain bodies

5.2(1) On the commencement of this Act—

- the Queensland Employment, Vocational Education and Training Board:
- all advisory committees and sub-committees;

being bodies constituted or established under or for the purposes of the repealed Act, are dissolved.

(2) On the first constitution of the State Training Council under this Act the Training Executive, constituted under the repealed Act, is dissolved, but until that time the executive continues in being with the functions and powers prescribed for the State Training Council for the purposes of this Act.

Savings

- **5.3(1)** Every order, requirement, direction, consent, registration, academic award, certificate, approval, rule, determination, notification, prohibition, delegation or other act of authority—
 - (a) made, given, granted, issued, done or otherwise originated under the repealed Act; and
 - (b) in force or subsisting immediately before the commencement of

this Act;

continues in force as if it were made, given, granted, issued, done or otherwise originated under this Act until it expires by effluxion of time or is revoked, cancelled or superseded under this Act.

- (2) All indentures and training agreements entered into under, or continued in force by, the repealed Act and in force immediately before the commencement of this Act continue in force and have effect as if they were entered into under this Act.
- (3) Those provisions of the *Apprentices and Minors Act 1929* and the regulations made under that Act that relate to minors other than apprentices, continued in force by the repealed Act and in force at the commencement of this Act, continue in force until superseded by awards, industrial agreements or orders made under the *Industrial Relations Act 1990*.
- (4) Those provisions of law that relate to the tools of trade to be provided by an employer to an apprentice continue in force until superseded by orders made by the Industrial Commission under this Act.
 - (5) A person who—
 - (a) was continued in an appointment as a training consultant or a welfare consultant for the purposes of the repealed Act; and
- (b) holds that appointment at the commencement of this Act; continues to hold the appointment for the purposes of this Act until he or she ceases to do so in accordance with law.
- (6) All fees or other moneys payable under the repealed Act and not paid at the commencement of this Act are to be taken as payable under this Act and may be recovered accordingly.

Provisions relating to dissolved Corporation etc.

- **5.4(1)** In this section—
- **"Board"** means the Queensland Employment, Vocational Education and Training Board constituted under the repealed Act;
- "Corporation" means The Employment, Vocational Education and Training Corporation constituted under the repealed Act;

- **"Training Executive"** means the Training Executive constituted under the repealed Act.
- (2) Property that, but for the enactment of this Act, would pass to or for the benefit of the Board, Corporation or Training Executive is to pass to or for the benefit of the Vocational Education, Training and Employment Corporation constituted under this Act and is to vest accordingly but without prejudice to any lawful claim in respect of that property.
- (3) On the commencement of this Act all property that is held by or vested in the Board, Corporation or Training Executive is divested from the owner or holder, and vests in the Vocational Education, Training and Employment Corporation constituted under this Act, for the same estate or interest and subject to the same trusts (if any) for and subject to which it vested in the Board, Corporation or Training Executive.
- (4) On the commencement of this Act a reference in the terms of any trust to the Board, Corporation or Training Executive includes a reference to the Vocational Education, Training and Employment Corporation constituted under this Act.
- (5) On the commencement of this Act all rights accrued or accruing to, and all liabilities of, the Board, Corporation or Training Executive pass to and become the rights or liabilities of the Vocational Education, Training and Employment Corporation constituted under this Act and may be enforced by or against that corporation accordingly.
- (6) All actions and proceedings commenced by or against the Board, Corporation or Training Executive and subsisting at the commencement of this Act and all contracts, matters and things entered into or commenced by any of them before that commencement may be continued by or against the Vocational Education, Training and Employment Corporation constituted under this Act.