

Queensland



VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 1991

**Reprinted as in force on 2 October 1998
(includes amendments up to Act No. 1 of 1997)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 2 October 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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**NATIONAL VOCATIONAL EDUCATION AND TRAINING
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VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 1991

[as amended by all amendments that commenced on or before 2 October 1998]

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

PART 1—PRELIMINARY

Short title

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

Commencement

2.(1) Section 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

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

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- (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; and
- (i) to improve links between vocational education and training and secondary or higher education; and
- (j) to promote the development of a national vocational education and training system in accordance with the National Statement.

Interpretation

4. In this Act—

“accreditation” of a course means confirmation that the course has met standards set by the commission.

“ANTA” means the Australian National Training Authority established under the *Australian National Training Authority Act 1992* (Cwlth).

“ANTA Act” means the *Australian National Training Authority Act 1992* (Cwlth).

“apprentice” means a person who is registered as an apprentice under this Act, whether or not the person has entered into a training agreement with an employer.

“apprenticeship” means an approved training scheme under section 68(2)(b).

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“apprenticeship calling” means a trade that is approved under section 68(9) as an apprenticeship calling.

“approved training organisation” means a vocational education and training establishment that is recognised as an approved training organisation under section 61.

“approved training scheme” has the meaning given by section 68(1).

“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” means a certificate, advanced certificate, associate diploma, diploma or other award that is approved by the commission.

“chief executive” means the chief executive of the department.

“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.

“course” means a structured sequence of vocational education and training.

“director”, in relation to a State college, means the person in charge of the college.

“employer” means an employer within the meaning of the *Industrial Relations Act 1990*,¹ and includes an industrial organisation 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

¹ Now see *Acts Interpretation Act 1954*, s 14H and *Workplace Relations Act 1997*.

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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.

“industrial award” means an award under the *Workplace Relations Act 1997*.

“industrial inspector” means an inspector under the *Workplace Relations Act 1997*.

“industrial instrument” means—

- (a) an industrial instrument under the *Workplace Relations Act 1997*;
or
- (b) an award or agreement made under the *Workplace Relations Act 1996* (Cwlth).

“industrial organisation” means—

- (a) registered under the *Industrial Organisations Act 1997* as an organisation; or
- (b) registered under the *Workplace Relations Act 1996* (Cwlth).

“Ministerial Council” means the Ministerial Council established in accordance with the National Statement.

“National Statement” means the statement set out in the schedule.

“National Strategic Plan” has the meaning given to it in the National Statement.

“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—

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- (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 1 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.

“recognition” of a training program or short course means confirmation that the program or course has met standards set by the commission.

“registration”, of an entity providing a course, training program or short course, means confirmation that the entity has met standards set by the commission.

“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.

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“short course” means a course—

- (a) that does not contain a component of an accredited course; and
- (b) for which a person completing the course does not receive an award.

“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.

“State Training Profile” has the meaning given to it in the National Statement.

“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).

“traineeship” means an approved training scheme under section 68(2)(a).

“training agreement” means an agreement of training, binding a trainee or apprentice and an employer, made under this Act.

“training consultant” means the Commissioner for Training and any other person appointed in accordance with this Act as a training consultant.

“training program” means a course—

- (a) that contains a component of an accredited course; and
- (b) for which a person completing the course does not receive an award.

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“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

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

6.(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

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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

7.(1) The commission consists of—

- (a) 3 persons having standing as employers, 1 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) 1 is drawn from the area of higher education; and
 - (ii) another is drawn from the area of general education and nominated by the Minister charged with the administration of the *Education (General Provisions) Act 1989*; and
- (d) the general manager for the time being of the commission; and
- (e) a nominee of the Commonwealth Minister responsible for vocational education and training; and
- (f) the chief executive.

(2) The members of the commission (other than the general manager of the commission and the chief executive) are to be appointed by the Governor in Council.

(3) The Governor in Council is to designate a member of the commission to be chairperson of the commission and another member to be deputy chairperson of the commission.

(4) The deputy chairperson is to act as chairperson during—

- (a) all vacancies in the office of chairperson; and
- (b) all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.

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Commission subject to direction of the Minister

8.(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 9(m) in relation to that financial year.

Functions of commission

9. 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 efficient and 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 decide policy about—
 - (i) the accreditation of courses; and
 - (ii) the recognition of training programs and short courses; and
 - (iii) the registration of persons providing courses, training programs or short courses; and
 - (iv) the conferment of awards; 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

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- (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, 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 funds 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; and
- (o) the commission's functions mentioned in section 10 as the State training agency for Queensland under the National Statement; and
- (p) to perform the functions of an approving authority under—
 - (i) the *Workplace Relations Act 1997*; or
 - (ii) the *Workplace Relations Act 1996* (Cwlth).

Functions of commission in relation to ANTA

10.(1) The commission is the State training agency for Queensland under the National Statement.

- (2)** In relation to ANTA, the functions of the commission are—
- (a) to advise ANTA about—

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- (i) the development of vocational education and training policy; and
- (ii) the development of the National Strategic Plan; and
- (iii) the vocational education and training needs of the State; and
- (b) to consult with ANTA about the allocation of funds by the authority to the commission; and
- (c) to develop with ANTA a State Training Profile based on the planning parameters set by the Ministerial Council and the National Strategic Plan; and
- (d) to ensure vocational education and training is managed and delivered in accordance with the National Strategic Plan and the State Training Profile; and
- (e) to consult with ANTA to enable it to make recommendations to the Ministerial Council for the more effective and efficient delivery of vocational education and training; and
- (f) to provide information to ANTA to enable it to maintain national data on vocational education and training; and
- (g) to provide annual vocational education and training performance reports to ANTA; and
- (h) to perform other functions given under the National Statement to Queensland's State training agency.

Powers of commission

11. 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

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- (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; and
- (j) to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Commission is statutory body

11A.(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the commission is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Commission's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Chairperson may sign agreements for commission

12. 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.

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Commission's rules

13.(1) The commission, with the approval of the Minister, may make rules with respect to—

- (a) the accreditation of courses; and
- (b) the recognition of training programs and short courses; and
- (c) the recognition of vocational education and training establishments as approved training organisations; and
- (d) the registration of entities providing courses, training programs or short courses; and
- (e) fees payable for the matters mentioned in paragraphs (a) to (d); and
- (f) standing committees and subcommittees appointed under section 11.2

(2) The rules are subordinate legislation.

(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

14.(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.

² Section 11 (Powers of commission)

Division 2—Standing committees of commission

Constitution of State Training Council

15.(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) 1 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 1 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 chief executive; 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 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

16.(1) The functions and powers of the State Training Council are—

- (a) to advise the commission on policy matters with respect to

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- 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 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

17.(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

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- (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 chief executive; 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

18.(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 coordinate 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

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- (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

19.(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 charged with the administration of the *Education (General Provisions) Act 1989*; 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

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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

20.(1) The functions and powers of the Accreditation Council are—

- (a) to make decisions and orders about—
 - (i) the accreditation of courses; and
 - (ii) the recognition of training programs and short courses; and
 - (iii) the registration of entities providing courses, training programs or short courses; and
- (b) to review accredited courses, recognised training programs and recognised short courses to ensure maintenance of standards and portability of awards; and
- (c) to administer a system of awards; and
- (d) to liaise about accreditation and recognition with—
 - (i) other recognition bodies; and
 - (ii) providers of secondary and higher education; and
 - (iii) persons conducting vocational education and training establishments; 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.

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(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

21. 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

Term of appointment

22.(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.

Vacancy in membership

23.(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

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- (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 22(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

24.(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.

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Manner of exercising power of Commission or standing committees

25.(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

26.(1) The commission or a standing committee may delegate all or any of its powers to any appropriately qualified person³ or other appropriate entity.

(2) A standing committee must inform the commission as soon as is practicable after it has made or revoked a delegation.

(3) In subsection (1)—

“appropriate entity” means an entity that is constituted by, or employs, appropriately qualified persons.

“appropriately qualified person” means a person with the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

A person’s classification level in the public service.

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

27.(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;

³ Also amended 1997 No. 1 s 495 sch 4 (see Endnotes—List of annotations)

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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 way in which its decisions are to be made; and
- (g) 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 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.

(3) 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

28. 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.

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Authentication of documents

29. 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

30.(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) 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.

Division 4—Vocational Education, Training and Employment Corporation

Chief executive is corporation sole

31.(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 is constituted by the chief executive.

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(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 34;⁴ 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.

Chief executive subject to direction of the Minister

32.(1) In respect of matters of policy and in exercise of its powers, and performance of its functions, under this Act, the chief executive 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

⁴ Section 34 (Power of corporation to be a member of other bodies)

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in the annual report of the department prepared in relation to that financial year.

Functions of corporation

33.(1) The functions of the corporation are—

- (a) to promote the creation of employment opportunities in the State; and
- (b) to work in cooperation 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 audiovisual 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

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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.

Corporation is statutory body

33A.(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the corporation is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Corporation's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Power of corporation to be a member of other bodies

34.(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

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(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

35. 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

36. 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

37. 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.

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Powers incident to maintaining State colleges

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

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- (l) establishment and conduct of student organisations;
- (m) disciplinary penalties for breaches of rules applicable in State colleges;
- (n) enforcement of occupational health and safety conditions considered by the chief executive to be necessary;
- (o) other matters associated with or relevant to the maintenance of State colleges or the provision of vocational education and training considered by the chief executive to be appropriate.

(2) A rule is subordinate legislation.

Trespass on State colleges

39.(1) A person must not be on premises comprising a State college except with lawful authority or excuse.

Maximum penalty—40 penalty units.

(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—

- (a) the director of the State college concerned or a person authorised by the director; or
- (b) 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.

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Production and sale of materials and services

40.(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

41. The corporation may delegate all or any of its powers under this Act to any person.

Division 5—Trusts, gifts and fees

Approved scheme

42. In this division—

“approved scheme” means a scheme prepared under section 43(1) and approved by the Minister.

Variation of trust purposes

43.(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

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- (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

44.(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.

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Requirement for schemes

45.(1) In selecting a purpose to be designated in a scheme prepared under section 43(1),⁵ 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

46.(1) If property to which an approved scheme, or an amendment of an approved scheme, relates consists wholly or partly of land, within 1 month following publication of the approved scheme or amendment in the industrial gazette the commission or corporation must notify the Registrar of Titles 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 amendment.

⁵ Section 43 (Variation of trust purposes)

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Rights and jurisdiction in equity not affected

47. 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.

Disposal of moneys

48. 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 employees etc. employed under Public Service Act

49.(1) The commission may employ persons and engage training and welfare consultants for this Act.

(2) A person may be employed as both a training consultant and a welfare consultant.

(3) The persons and consultants are to be employed under the *Public Service Act 1996*.

Division 7—State college councils

Establishment and constitution of councils

52.(1) In this section—

“**officer**” of a State college means an officer of the public service employed at the State college.

(2) A college council must be established for each State college in the way decided by the Minister.

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(3) Subject to any variation therein directed by the Minister, a State 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 chief executive; and
- (c) an officer of the Commonwealth department responsible for vocational education and training nominated by the chief officer of the Commonwealth department in the State; and
- (d) an officer of the State college nominated by the 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—
 - (i) industry;
 - (ii) commerce;
 - (iii) industrial organisations of employees;
 - (iv) local government;
 - (v) general education;
 - (vi) 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

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the relevant industry training advisory bodies.

(4) 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

53. 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 ongoing 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 subparagraph (i); and
 - (iii) if required by the director to do so—
 - (A) to assist the director in assessment of overall student

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- 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 chief executive; 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 cooperative 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

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- (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

54.(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

55. 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

56. 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

57. A vacancy occurs in the office of an appointed member of a State college council if the member—

- (a) dies; or

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- (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

58.(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.

Division 8—ANTA

Conferral of functions on ANTA in relation to State

59. ANTA has the functions, in relation to the State, that are expressed to be conferred on it by the ANTA Act.

Powers of ANTA in State

60.(1) In this State, ANTA has power to do all things in the performance of the functions, and may exercise the powers, expressed to be conferred on it by—

- (a) this Act; or
- (b) the ANTA Act; or
- (c) the law of another State or a Territory corresponding to this Act.

(2) In this State, ANTA also has power to do all things necessary or convenient to be done in the performance of the functions expressed to be conferred on it by the laws mentioned in subsection (1).

(3) This section is in addition to, and does not limit, another law of the Commonwealth, a State or a Territory that confers power on ANTA.

PART 3—TRAINING ADMINISTRATION

Division 1—Vocational education and training establishments

Recognition of vocational education and training establishments as approved training organisations

61.(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.

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

(9) The register is to be in such form and contain such particulars as are determined by the commission.

Renewal of certificate

62.(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.

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(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

63. If the commission refuses an application for a certificate under section 61⁶ or an application for renewal of a certificate under section 62⁷ 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

64. After the expiry of 60 days following publication of a notification under section 61(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 61.

Maximum penalty—40 penalty units.

Cancellation or suspension of recognition as approved training organisation

65.(1) The commission may cancel or suspend for any period a certificate of recognition under section 61 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

⁶ Section 61 (Recognition of vocational education and training establishments as approved training organisations)

⁷ Section 62 (Renewal of certificate)

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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.

Maximum penalty—40 penalty units.

(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 1 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

66.(1) In this section—

“vocational education and training establishment” includes a State college.

(2) 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—

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- (c) a vocational education and training establishment; or
- (d) a program 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.

(3) If a person called on under subsection (2) 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.

(4) A person to whom an order made under subsection (3) is directed must comply immediately with the order.

Maximum penalty—40 penalty units.

(5) If a person convicted of an offence against this Act that consists of a failure to comply with an order made under subsection (3) 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 1 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.

Control over matters about the conferring of awards

67.(1) In this section—

“advertisement” of a matter includes a verbal or written representation that—

- (a) is intended to inform, or is likely to have the effect of informing, another person of the matter; or
- (b) is intended, or likely, to induce another person to believe the matter.

“prescribed words” means—

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- (a) if the course for which the award is issued has not been accredited—

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

- (b) if the entity conferring or offering to confer the award is not registered to provide the course for the award—

‘The provider of this award is not registered under the *Vocational Education, Training and Employment Act 1991*’.

“vocational education and training establishment” includes a State college.

(2) A person conducting a vocational education and training establishment is authorised to confer an award if—

- (a) the award is for a course accredited by the Accreditation Council and the person—

(i) provides, and is registered by the Accreditation Council to provide, the course; or

(ii) is authorised to confer the award by the entity that provides, and is registered by the Accreditation Council to provide, the course; or

- (b) the person is authorised by a law of the Commonwealth, another State or a Territory to confer the award.

(3) A person conducting a vocational education and training establishment who is not authorised to confer an award must not—

(a) confer the award; or

(b) offer to confer the award; or

(c) advertise that the person is authorised to confer the award.

Maximum penalty—40 penalty units.

(4) A person conducting a vocational education and training establishment must not advertise that another person who is not authorised to confer an award—

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- (a) confers the award; or
- (b) offers to confer the award; or
- (c) is authorised to confer the award.

Maximum penalty—40 penalty units.

(5) Subsections (3) and (4) apply to—

- (a) a person conducting a vocational education and training establishment in Queensland who does any of the acts mentioned in either subsection in Queensland or elsewhere; and
- (b) a person conducting a vocational education and training establishment outside Queensland who does any of the acts mentioned in either subsection in Queensland.

(6) Despite subsection (3), a person who is not authorised to confer an award may—

- (a) if the prescribed words are written on the award—confer the award; and
- (b) if the prescribed words are stated in any offer or advertisement made by or on behalf of the person—offer to confer the award or advertise that the person may lawfully confer the award.

Division 2—Approved training schemes

Approved training schemes

68.(1) The State Training Council may approve a type of training scheme (an “**approved training scheme**”) it considers necessary or desirable to advance the knowledge and skills required in industry or commerce.

(2) An approved training scheme may consist of—

- (a) a traineeship; or
- (b) an apprenticeship—
 - (i) in an apprenticeship calling; or
 - (ii) to a group of occupations, at least 1 of which is an

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apprenticeship calling; or

(iii) in part of an apprenticeship calling.

(3) The council must decide the training required to be completed by a trainee or apprentice in an approved training scheme.

(4) The training may include a course of instruction or on-the-job training.

(5) A person employing an apprentice in an approved training scheme must employ the apprentice under a training agreement.

Maximum penalty—40 penalty units.

(6) The council may require or authorise a trainee, or a type of trainee, employed in an approved training scheme to be employed under a training agreement.

(7) An employer may apply to the council to employ a person, under a training agreement, in a training scheme not approved by the council.

(8) If the council approves the application, this Act applies to the training agreement as if the training scheme were an approved training scheme.

(9) The council may approve a trade, generally or in a particular industry, to be an apprenticeship calling.

(10) The provisions of this Act about apprenticeships or apprentices apply to all apprenticeship callings.

(11) The council must notify an approval under subsection (1) or (9) in the industrial gazette.

Prohibition of premium for training scheme

69.(1) In this section—

“**trainee**” includes an apprentice.

(2) A person must not demand, accept or agree to accept (directly or indirectly) from another person a premium for—

(a) employing a trainee in a training scheme; or

(b) inducing, or attempting to induce, another person to employ a

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trainee in a training scheme; or

- (c) cancelling a training agreement.

Maximum penalty—40 penalty units.

(3) If a court finds a person guilty of accepting a premium in contravention of subsection (2), it may order the person to—

- (a) return the premium to the person who gave the premium; or
(b) reimburse the person who gave the premium.

(4) Subsection (3) does not affect the court's power to impose a penalty.

(5) An order under subsection (3) may be filed in a court with jurisdiction in an action for debt for the amount payable under the order ("**filing court**") and be enforced as an order of the filing court.

Training agreements

70.(1) In this section—

"trainee" includes an apprentice.

(2) If an employer agrees to employ a person in an approved training scheme that requires employment under a training agreement, the employer must send to the State Training Council—

- (a) an application for the person's registration as a trainee; and
(b) a training agreement.

Maximum penalty—40 penalty units.

(3) The application and training agreement must be signed by the following persons (the "**parties to the agreement**")—

- (a) the employer;
(b) the person;
(c) if the person is a minor—the person's guardian.

(4) On receiving the application and training agreement, the council must record the following particulars in a register—

- (a) the names of the parties to the agreement;

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- (b) any other particulars decided by the council.
- (5) The council must consider the application and approve or refuse it.
- (6) After making the decision, the council must promptly—
 - (a) if it approves the application—return a copy of the approved training agreement to each of the parties to the agreement; or
 - (b) if it refuses the application—
 - (i) write to each of the parties to the agreement giving the reasons for the refusal; and
 - (ii) remove the person’s particulars from the register.
- (7) The training agreement binds—
 - (a) the trainee and the trainee’s employer throughout the period of the agreement; and
 - (b) the trainee’s guardian while the trainee is a minor.

Trainee probation

71.(1) In this section—

“**trainee**” includes an apprentice.

(2) A trainee is employed on probation from the start of work with the trainee’s employer for the period (of no more than 180 days) specified by the State Training Council.

(3) The probationary period is part of the period to be served in a training scheme.

(4) The probationary period is extended by any period for which a trainee is absent from work.

(5) A trainee’s service may be terminated during the probationary period by 1 week’s notice (a “**termination notice**”) given by—

- (a) the trainee to the employer; or
- (b) the employer to the trainee.

(6) A trainee who terminates the service without giving a termination notice loses an amount equal to 1 week’s wages to the employer.

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(7) An employer who terminates the service without giving a termination notice must pay the trainee an amount equal to 1 week's wages.

(8) An amount owed by a person to another person because of subsection (6) or (7) may be recovered by an action in an Industrial Magistrates Court or as otherwise prescribed by an Act.

Amendment of training agreement

72.(1) A party to a training agreement who wants to amend the agreement must send an application for amendment to the State Training Council.

(2) The council must consider the application and approve or refuse it.

(3) After making the decision, the council must promptly—

- (a) if it approves the application—return a copy of the approved amendment to each of the parties to the agreement; or
- (b) if it refuses the application—write to each of the parties to the agreement giving the reasons for the refusal.

Period of training scheme

73.(1) In this section—

“**trainee**” includes an apprentice.

“**training period**” means the period of an approved training scheme to be served by a trainee under a training agreement.

(2) For each type of approved training scheme, the State Training Council must decide whether the training period is completed—

- (a) at the end of a period specified by the council; or
- (b) when the trainee reaches a level of competence indicating to the council that the trainee is qualified in the occupation or trade concerned.

(3) The council may reduce or extend the training period to be served by a particular trainee by a period it considers appropriate.

(4) The council may reduce the training period if the council considers it

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appropriate because—

- (a) of the experience and knowledge gained by the trainee before starting the training scheme; or
- (b) of the experience and knowledge gained by the trainee when employed under a training agreement that has since been cancelled; or
- (c) the trainee is making exceptional progress in gaining theoretical or practical knowledge of the occupation or trade concerned.

(5) The council may extend the training period if it considers the trainee is not making appropriate progress in gaining theoretical or practical knowledge of the occupation or trade concerned.

(6) If the council reduces or extends the training period, the training agreement is taken to be amended in the same way.

(7) The council may cancel a training agreement if it considers it unlikely that the trainee will make appropriate progress in gaining theoretical or practical knowledge of the occupation or trade concerned.

(8) The council must give the trainee a certificate of completion if it is satisfied that the trainee has completed an approved training scheme.

Temporary assignment of trainee

74.(1) In this section—

“**trainee**” includes an apprentice.

(2) A trainee may be assigned from the trainee’s employer to another person for training for a period (of no more than 6 months) specified by the State Training Council.

(3) The employer of a trainee who wants to assign the trainee must send an application for assignment to the council.

(4) The council must consider the application and approve or refuse it.

(5) After making the decision, the council must promptly—

- (a) if it approves the application—give written notice of the approval to each of the parties to the application; or

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- (b) if it refuses the application—write to each of the parties to the application giving the reasons for the refusal.

Trainees attendance at courses of instruction

75.(1) In this section—

“**trainee**” includes an apprentice.

(2) The State Training Council may decide that a trainee, as part of an approved training scheme, must take a specified course of instruction—

- (a) by attending a State college, another college or a school approved by the council; or
- (b) by correspondence with a State college.

(3) The council must give written notice of the decision to—

- (a) the trainee; and
- (b) the trainee’s employer; and
- (c) if the trainee is a minor—the trainee’s guardian.

(4) The trainee and employer must comply with the decision.

Maximum penalty—40 penalty units.

(5) An employer must allow a trainee to take annual holidays at a time other than when the trainee is required to take a specified course.

Maximum penalty—40 penalty units.

Trainee or apprentice not required to be member of industrial organisation of employees

76.(1) In this section—

“**trainee**” includes an apprentice.

(2) A person must not require, force or attempt to force a trainee to become a member of an industrial organisation of employees.

Maximum penalty—40 penalty units.

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Minimum qualifications for apprenticeships

77.(1) The State Training Council may decide, by industrial gazette notice—

- (a) the age; and
- (b) the minimum standard of education;

a person must have reached (the **“minimum qualifications”**) before the person may enter into an apprenticeship.

(2) Different minimum qualifications may be decided for different types of apprenticeships.

(3) If a person has received education outside the State, the minimum standard of education is the standard the council decides is equal to the standard decided under subsection (1) for the apprenticeship calling concerned.

(4) Despite subsection (1), the council may allow a person who does not have the minimum qualifications to enter into an apprenticeship.

Restrictions on employing persons under 21 in an apprenticeship calling

78.(1) A person must not employ or use a person who has not reached 21 years (a **“youth”**) in an apprenticeship calling unless the youth—

- (a) has completed an apprenticeship in the calling; or
- (b) is an apprentice in the apprenticeship calling employed by the person.

(2) A person must not employ a youth as an apprentice in an apprenticeship calling other than under this Act.

(3) A youth must not, without first obtaining the approval of the State Training Council—

- (a) engage in an apprenticeship calling on the youth’s own behalf unless the youth has completed an apprenticeship in the calling; or

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- (b) enter employment with another person as an apprentice other than under this Act.

Maximum penalty—40 penalty units.

Employer's entitlement to apprentice

79.(1) In this section—

“person” includes—

- (a) a person who contracts the person's work out, wholly or substantially, to subcontractors; or
- (b) a group training scheme; or
- (c) an industrial organisation; or
- (d) a group of 2 or more persons.⁸

(2) The State Training Council may allow a person to employ at least 1 apprentice in an apprenticeship calling if—

- (a) the person—
 - (i) is a tradesperson in the calling; or
 - (ii) employs a tradesperson in the calling; or
 - (iii) is able to make arrangements in the person's business to make tradespersons in the calling available to train apprentices; and
- (b) the person satisfies the council that the person has (or has made arrangements to ensure there will be) sufficient plant, facilities and tradespersons to adequately train the apprentice in the calling.

(3) If a group of more than 1 person is permitted to employ an apprentice, the council must—

- (a) decide the liabilities of each member of the group under the apprenticeship; and

⁸ This definition is included to avoid doubt, despite the *Acts Interpretation Act 1954*, section 32C.

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(b) give each member written notice of the liabilities.

(4) Each member must comply with the decision.

Maximum penalty—40 penalty units.

Apprentice must be paid for course time

80. Time spent by an apprentice to undertake a specified course of instruction under section 75, to the maximum time specified by the State Training Council, is to be regarded as ordinary time worked by the apprentice for which the apprentice is entitled to be paid.

Division 3—Other training arrangements

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

81.(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 a training agreement 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 a training agreement is necessary, it must determine that period.

(4) A determination under subsection (2) may also specify that a person

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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

82.(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—

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- (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.

Maximum penalty for subsection (6)—40 penalty units.

Division 4—Entitlements

Fixing of wages payable to trainees

83.(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 industrial instrument 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.

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(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 industrial instrument 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

84.(1) In this section—

“eligible trainee” means a trainee who, within the meaning of any relevant industrial instrument or industrial agreement, is an eligible employee for the purposes of entitlement to occupational superannuation benefits.

“trainee” includes an apprentice.

(2) Where an industrial instrument 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 industrial instrument or industrial agreement; and

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- (b) in accordance with such industrial instrument or industrial agreement.

Maximum penalty—40 penalty units.

(3) If a person convicted of an offence against this Act that consists of a failure to comply with subsection (2) persists in that failure, that person commits a continuing offence, which may be charged in 1 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 industrial instrument or industrial agreement, but to such a scheme or fund other than that required by the industrial instrument or industrial agreement, does not commit the offence defined in subsection (2) 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 industrial instrument or industrial agreement.

(5) Subsection (5A) applies if the industrial commission has made an order under the *Workplace Relations Act 1997* in relation to an approved occupational superannuation fund as the one to which an industrial instrument requires contribution to be made.

(5A) If an employer fails to make the contribution as required by the order, the employer is taken to fail to make the contribution as required by the industrial instrument.

(6) The Industrial Magistrate before whom a defendant is convicted of an offence defined in subsection (2) may make in relation to the defendant an order that the Magistrate is authorised to make under section 103 on application made under that section and the provisions of that section apply and extend accordingly.

Trainees' entitlements if not under training agreement

85. Despite not having entered into a training agreement as a trainee, a person is entitled to all the entitlements under this Act of a trainee under a training agreement if the person is training—

- (a) under an approved training scheme mentioned in

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section 68(2)(a);⁹ and

- (b) under conditions substantially equivalent to conditions in a training agreement.

Fixing of wages payable to apprentices

86.(1) The rate of wage payable to an apprentice is—

- (a) if an industrial instrument 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

⁹ Section 68 (Approved training schemes)

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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 industrial instrument or industrial agreement; or
- (b) an apprentice is in employment to which no industrial instrument or industrial agreement applies;

the State Training Council must determine the industrial instrument 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 industrial instrument or industrial agreement so determined is the rate of wage payable to the apprentice.

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Fixing of other entitlements of apprentices

87.(1) Subject to this Act, an apprentice is entitled to the same conditions of employment as those fixed by the industrial instrument 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 86(5)¹⁰ an industrial instrument 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 industrial instrument or industrial agreement.

(3) Where an industrial instrument 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 industrial instrument or industrial 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 industrial instrument or industrial 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 industrial instrument 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 industrial instrument 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

¹⁰ Section 86 (Fixing of wages payable to apprentices)

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Commission, by its order, may fix allowances that are different from those in an industrial instrument or industrial agreement applicable to an apprentice and any such order while it subsists, supersedes any provision relating to allowances of the industrial instrument or industrial agreement so far as the apprentice's entitlement to an allowance is concerned.

(6) Where there is no provision in an industrial instrument 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 within 3 months after the leave becomes 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.

Apprentices' entitlements if not under training agreement

88. 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 78¹¹ is entitled to all the entitlements conferred by this Act on an apprentice employed in an apprenticeship calling in accordance with this Act.

¹¹ Section 78 (Restrictions on employing persons under 21 in an apprenticeship calling)

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Industrial Commission may order provision of tools of trade

89.(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 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.

Division 5—General provisions

Effect of death or retirement of a partner

90.(1) 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 a training agreement is to be assigned, the matter is to be decided by the State Training Council.

Temporary inability of employer to provide work

91.(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

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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.

Inspection of time and wages record

92.(1) An employer must produce a time and wages record for inspection by—

- (a) a training consultant; or
- (b) an industrial inspector; or
- (c) a person authorised by the State Training Council.

(2) In this section—

“time and wages record” see the *Workplace Relations Act 1997*, section 391.

Training record

93.(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 containing instructions in respect of the completion of the record.

(2) A person to whom a training record is issued must maintain in it a record of his or her training and produce it to the employer from time to

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time in accordance with—

- (a) the instructions contained in the record; and
- (b) such further written instructions as the State Training Council gives to the person, from time to time.

Maximum penalty—40 penalty units.

(3) An employer to whom a training record is produced must make, in respect of each entry, a notation indicating whether or not the entry is correct.

Maximum penalty—40 penalty units.

(4) A notation may be in respect of more than 1 entry.

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

Maximum penalty—40 penalty units.

Period of absence from employment may be added to training period

94.(1) In this section—

“**trainee**” includes an apprentice.

(2) If a trainee is absent from the trainee’s employment (other than as required under this Act) during the period of training required under the trainee’s training agreement, the State Training Council may extend the period of the training.

(3) The Council may extend the period of training for any period (not longer than the period of absence) it considers appropriate.

(4) If the Council extends the period of training, the training agreement is taken to be amended in the same way.

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

95. An employer must not directly or indirectly—

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- (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.

Maximum penalty—40 penalty units.

Discipline

96.(1) In this section—

“**trainee**” includes an apprentice.

(2) If the State Training Council considers, on reasonable grounds, that a trainee has engaged in misconduct mentioned in subsection (5), the Council may make 1 or more of the following orders—

- (a) an order cancelling or suspending a training agreement;
- (b) an order directing the trainee to pay an amount of not more than 4 penalty units;
- (c) an order reprimanding the trainee.

(3) The council may act under subsection (2)—

- (a) on a complaint made to it by the trainee’s employer; or
- (b) on its own initiative, on information received from any source.

(4) The State Training Council must not make an order under subsection (2) unless—

- (a) it has first given the trainee an opportunity to present a case as to why an order should not be made; and
- (b) whether or not the trainee takes the opportunity referred to in paragraph (a), it is satisfied that the circumstances warrant the

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making of an order under subsection (2).

(5) Misconduct in respect of which action may be taken under subsection (2) occurs if the 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 trainee is required to attend under this Act; or
- (e) is absent from classes which the 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 trainee is required to undertake; or
- (h) fails to maintain a training record, or fails to produce it to the employer, as required by section 93;¹² or
- (i) on being required to do so by a training consultant or welfare consultant, fails to produce the training record for inspection; or
- (j) fails to make satisfactory progress in the theoretical or practical knowledge appropriate to the apprenticeship calling or traineeship in question.

(6) If a trainee is ordered to pay an amount under subsection (2), the State Training Council must direct whether it is to be paid directly by the trainee or deducted by the employer from the wages of the trainee.

(7) All amounts ordered under subsection (2) to be paid are to be paid to and are the property of the corporation.

(8) Cancellation of an indenture or a training agreement under subsection (2) has no effect until the expiry of 4 weeks, or such shorter

¹² Section 93 (Training record)

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period as the State Training Council may direct in a particular case, following the day on which the council orders the cancellation.

(9) An order made under this section has effect in law according to its terms and must be given effect by all persons concerned.

Maximum penalty—40 penalty units.

(10) A direction given under this section must be complied with by the person to whom it is addressed.

Maximum penalty—40 penalty units.

Cancellation of training agreement on request

97. The State Training Council may cancel 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

98.(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 78.¹³

(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.

Maximum penalty—40 penalty units.

(3) On conviction of an employer for a failure to comply with

¹³ Section 78 (Restrictions on employing persons under 21 in an apprenticeship calling)

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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; or
- (d) a training consultant or industrial inspector;

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

99.(1) In this section—

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“**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 78.¹⁴

(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.

Maximum penalty—40 penalty units.

(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.

Maximum penalty—40 penalty units.

(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.

Maximum penalty—40 penalty units.

(4A) An offence under subsection (2), (3) or (4) is a continuing offence, that may be charged in 1 complaint for a period.

(5) A person must not—

- (a) state anything to the State Training Council that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the State Training Council anything without which the statement is, to the person’s knowledge, misleading in a material particular.

¹⁴ Section 78 (Restrictions on employing persons under 21 in an apprenticeship calling)

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Maximum penalty—40 penalty units.

(6) A complaint against a person for an offence against subsection (5) is sufficient if it states that the statement made was false or misleading to the person's knowledge.

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

100.(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 78.¹⁵

(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
- (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—

¹⁵ Section 78 (Restrictions on employing persons under 21 in an apprenticeship calling)

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- (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 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; or
- (d) a training consultant or industrial inspector;

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

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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

101.(1) In this section—

“**amount due**”, to an apprentice, includes an amount equal to the cost of tools of trade to which section 98(2)¹⁶ relates that have not been provided to the apprentice.

“**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 78.¹⁷

“**demand**” means a written demand.

(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.

Maximum penalty—40 penalty units.

(3) On demand duly made by a training consultant or an industrial

¹⁶ Section 98 (Provision of tools of trade)

¹⁷ Section 78 (Restrictions on employing persons under 21 in an apprenticeship calling)

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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 industrial instrument 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.

Maximum penalty—40 penalty units.

(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 100.

Accounting for moneys paid to training consultant or industrial inspector

102.(1) A training consultant or industrial inspector to whom an amount is paid on demand under section 101 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 101 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

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superannuation scheme or fund to the credit of an eligible apprentice or trainee, which was unpaid; or

(ii) an amount referred to in section 101(3)(b)(ii);

it is to be paid—

(iii) to an approved occupational superannuation scheme or fund under any industrial instrument 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 101 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 chief executive 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* (Cwlth)—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

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that may revert to the apprentice or trainee in accordance with the *Occupational Superannuation Standards Act 1987* (Cwlth)—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 chief executive to be disposed of as prescribed by subsection (5).

Recovery of unpaid superannuation contribution due to apprentice or trainee

103.(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 78.

“**relevant industrial instrument**” of an apprentice includes an industrial instrument determined by the State Training Council under section 86(5)¹⁸ for the apprentice’s apprenticeship calling.

(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 industrial instrument or industrial agreement to pay—

¹⁸ Section 86 (Fixing of wages payable to apprentices)

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- (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 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 industrial instrument 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* (Cwlth)—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* (Cwlth)—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

104. An application made under section 98(4), 100(6) or 103(2)¹⁹ 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

State bound by Act

105.(1) This Act binds the State.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

(3) However, subsection (2) does not prevent the prosecution of an officer, employee or agent of the State for an offence.

Act prevails in event of inconsistency

106.(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

¹⁹ Section 98 (Provision of tools of trade), 100 (Recovery of moneys due and payable to, or on account of apprentice or trainee) or 103 (Recovery of unpaid superannuation contribution due to apprentice or trainee)

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- (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 industrial instrument or industrial agreement that is inconsistent with this Act, whether the provision was made before, or is made after, the commencement of this Act.

Approved forms of State Training Council

107.(1) The State Training Council may approve a form for the purposes of this Act.

(2) If the council approves a form for a purpose, the form must be used for the purpose.

(3) A person may request the council to give the person an approved form.

(4) The council must promptly comply with the request.

Conflict of interest

108.(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 34;²⁰ 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

²⁰ Section 34 (Power of corporation to be member of other bodies)

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a member or manager of a corporation or body, or the chief executive in any other case.

Maximum penalty—40 penalty units.

(2) The Minister or chief executive 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.

Maximum penalty—40 penalty units.

Holders of office to act honestly and with propriety

109.(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 34; 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.

Maximum penalty—40 penalty units.

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Protection of name of commission and corporation

110. 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.

Maximum penalty—40 penalty units.

Entry onto premises

111.(1) The following persons—

- (a) a training consultant or welfare consultant;
- (b) an industrial inspector;
- (c) 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 112 or 113.²¹

(2) A person referred to in subsection (1) who enters premises under authority of a warrant issued under section 112 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

²¹ Section 112 (Monitoring warrant) or 113 (Offence related warrant)

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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 113 may exercise any power referred to in subsection (2) and may seize as prescribed by section 113 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 1 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 112.

(5) The persons referred to in subsection (4) who enter premises under authority of a warrant issued under section 112—

- (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

112.(1) A person referred to in section 111(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

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requisition made or issued under this Act or the provisions of—

- (i) an industrial instrument or industrial agreement on matters relevant to this Act; or
 - (ii) any 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 111(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 1 month following issue of the warrant) on which the warrant ceases to have effect.

Offence related warrant

113.(1) A person referred to in section 111(1)²² 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

²² Section 111 (Entry onto premises)

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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 111(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 1 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

114.(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

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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

115. A person referred to in section 111(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 wellbeing and adequate training of apprentices, trainees and other persons in employment to whom this Act applies.

Maximum penalty—40 penalty units.

Offences of obstruction and failing to answer questions

116.(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

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section 111 or performance of a duty referred to in section 115;

- (b) refuse or fail to answer truthfully a question put to him or her in lawful exercise of a power referred to in section 111 or performance of a duty referred to in section 115, unless the person has a lawful excuse.

Maximum penalty—40 penalty units.

(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

117.(1) The chairperson of the commission or the commissioner for training, by written notice, may require a person who is a party to 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 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.

Maximum penalty—40 penalty units.

(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

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required of the person unless he or she has a lawful excuse.

Maximum penalty—40 penalty units.

(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

118. A person must not wilfully or negligently destroy, deface, alter, take or interfere with—

- (a) a training agreement; or
- (b) 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
- (c) any document made or completed for the purpose of this Act;

unless the person has lawful authority or excuse.

Maximum penalty—40 penalty units.

Protection of confidentiality

119.(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.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to disclosure of information—

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- (a) for the purposes of this Act; or
- (b) with the authorisation of the chief executive; 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.

Proceedings for offences

120.(1) Proceedings in respect of an offence defined in section 39²³ 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 39—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

121. The provisions of section 471(2), (3) and (4) of the *Industrial Relations Act 1990*²⁴ relating to proceedings generally before industrial magistrates apply in relation to proceedings before industrial magistrates for the purposes of this Act.

²³ Section 39 (Trespass on State colleges)

²⁴ Now see the *Acts Interpretation Act 1954* s 14H and *Workplace Relations Act 1997*.

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Representation of parties

122.(1) 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.

(2) This section does not apply to proceedings in respect of an offence defined in section 39.²⁵

Evidentiary provisions

123.(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;
 - (iii) the appointment as industrial inspector of a person claiming to be, or stated to be, an industrial inspector, and the authority of an industrial inspector to take a proceeding or do any act;
- (b) 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;

²⁵ Section 39 (Trespass on State colleges)

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- (c) 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;
- (d) 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—
 - (iii) the person is not, or was not at a material time, registered as an apprentice or a trainee under this Act; or
 - (iv) the vocational education and training establishment is not, or was not at a material time, an approved training organisation under this Act;
- (e) 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;
- (f) a training agreement is evidence of the matters contained in agreement;
- (g) a document apparently published by or on behalf of a State college is evidence that the document was authorised by the director of the State college;
- (h) a copy of an industrial instrument (other than an instrument made

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under the *Workplace Relations Act 1996* (Cwlth)), certified as a true copy by the registrar of the industrial commission, is admissible as evidence of the instrument;

- (i) a certificate purporting to be a certificate of a trustee of an occupational superannuation fund, for a period of service of an apprentice or trainee concerned in the proceeding about—
 - (i) an amount paid as contribution to the fund; or
 - (ii) an amount worked out on the rate of return that stated contributions would have attracted to the fund;

is evidence of the matters.

(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

124.(1) A person aggrieved by a decision (other than a decision of the State Training Council under section 87(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 given to the commission's chairperson within 21 days after the day written notice of the decision or action is given to the person aggrieved or within a further period allowed at any time by the commission.

(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 given to the Minister within 21 days after the day written notice of the decision is given

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to the person aggrieved or within a further period allowed at any time by the Minister.

(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) An appeal is to be by way of rehearing, unaffected by the decision appealed against.

(8) In deciding an appeal, the commission, the Minister or industrial magistrate (“**appeal tribunal**”) may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the matter to the person or body that made the decision with directions the appeal tribunal considers appropriate.

(9) When substituting another decision, an appeal tribunal has the same powers as the person or body that made the decision appealed against.

(10) If an appeal tribunal substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the decision of the person or body appealed against.

(11) A party aggrieved by a decision of an industrial magistrate may appeal to an industrial court but only on a question of law.

(12) 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.

(13) The provisions of this section apply despite any other Act or any law.

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Indemnity to persons administering Act

125. 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

126.(1) The Governor in Council may make regulations for the purpose of this Act.

(2) A regulation 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 conditions of a training agreement; or
- (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;

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- (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, amendment, cancellation and assignment of 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, including fees for instruction, assessment or other services provided by a State college;
- (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

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- 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) exempting a person from any provision of this Act.

PART 5—TRANSITIONAL PROVISIONS

Indentures become training agreements

127. An indenture in force immediately before the commencement of this section is taken to be a training agreement from the commencement.

Apprenticeships and traineeships become approved training schemes

128. An apprenticeship or traineeship in existence immediately before the commencement of this section is taken to be an approved training scheme.

Transitional provision about existing delegations

129.(1) This section applies to a delegation—

- (a) made under section 26²⁶ before the commencement of this section; and
- (b) in force immediately before the commencement.

²⁶ Section 26 (Power of delegation by commission)

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(2) The delegation continues to have effect for 1 year after the commencement, unless the delegation sooner expires or is revoked.

(3) This section expires 1 year after the commencement.

References to repealed Act

129. A reference in an Act or document to the *Employment, Vocational Education and Training Act 1988* is taken to be a reference to this Act.

SCHEDULE

NATIONAL VOCATIONAL EDUCATION AND TRAINING STATEMENT

section 4

Objectives

1. In supporting the proposal for an Australian National Training Authority (ANTA), the main aim would be to promote—

- a national vocational education and training system, with agreed objectives and priorities, assured funding arrangements, consistent national strategies and a network of providers delivering high quality, nationally recognised programs at the State and local level; and
- close interaction between industry and vocational education and training providers, to ensure that the training system operates within a strategic plan that reflects industry's needs and priorities; and
- an effective training market, with public and private provision of both high level, advanced technical training and further education opportunities for the workforce and for the community generally; and
- an efficient and productive network of publicly funded providers that can compete effectively in the training market; and
- increased opportunities and improved outcomes for individuals and target groups, including school leavers, to enhance their employment outcomes; and
- improved cross-sectoral links between schools, higher education and vocational education and training.

SCHEDULE (continued)

Framework

2. The new National System would have the following key features—

- a Ministerial Council to oversee the ANTA and to be responsible for decisions on strategic policy, national objectives and priorities;
 - decision making by the Ministerial Council will be on the basis of voting by all of its members
- an ANTA responsible for the development of, and advice on, national policy and the development of a draft National Strategic Plan on vocational education and training, within the framework of National Goals, Objectives and Priorities established by the Ministerial Council and for endorsement by the Ministerial Council;
- State training agencies²⁷ as distinct bodies in the context of a National Training System with responsibility for vocational education and training within their own borders consistent with the agreed National Strategic Plan on Training Policy and the agreed State Training Profile. State training agencies will be accountable to State Ministers and parliaments for the operational responsibilities of their agencies and accountable to the Ministerial Council on matters of national policy. The relationship between State training agencies and ANTA will be formally defined in Commonwealth and State legislation consistent with this agreement.

Key planning instruments

3. Planning processes for the new National System would involve the following key planning instruments:

- Agreed National Goals, Objectives and Priorities
 - these constitute the long-term, broad policy framework for

²⁷ One such agency to be designated by each State as the coordinating point for the purpose of this agreement and to be listed in the relevant schedule.

SCHEDULE (continued)

the National Vocational Education and Training System and would include Common and Agreed National Goals for Vocational Education and Training, long-term participation targets (such as those arising from the Finn Report), priorities for longer term reform (such as reforms to entry-level training arrangements) and any agreed improvements in the cost and quality of service provision.

- A National Strategic Plan for Vocational Education and Training
 - setting strategic directions for the vocational education and training system over the medium term (3 to 5 years) consistent with agreed national goals, objectives and priorities
 - endorsed by the Ministerial Council to provide a national strategic framework to guide the operations of the ANTA.
- Planning Parameters
 - setting firm targets and priorities for the provision and support of vocational education and training for the year ahead and indicative parameters for the following 2 years on the basis of funds already approved
 - determined by the Ministerial Council, for inclusion in the guidelines issued to the ANTA for the development of profiles with the State training agencies.
- Profiles
 - within the ambit of ANTA's responsibilities (see paragraph 36), defining a single and comprehensive plan for the provision and support of vocational education and training (in terms of level and type of course provision, other training services and infrastructure development) for the year ahead and outlining an indicative plan for the following 2 years
 - : at the State level and, in aggregate, at the national level
 - agreed by the Ministerial Council.

SCHEDULE (continued)

**ROLES AND RESPONSIBILITIES OF THE KEY
PARTIES****The Ministerial Council**

4. The council will consist of 1 Minister from each State and Territory and the Commonwealth responsible for vocational education and training and will be chaired by the Commonwealth.

5. On the Ministerial Council, each State and Territory Minister will have 1 vote while the Commonwealth Minister will have 2 votes and a casting vote. All matters will be decided by a simple majority.

6. The functions of the Ministerial Council would include:

- to agree on necessary Commonwealth and State legislation establishing the ANTA and defining the relationship between the ANTA, the Ministerial Council and State training agencies
- to decide on the appointment of members of the ANTA and their removal
- to decide on the appointment of the chairperson of the ANTA
- to determine the budget for, and establishment of, the ANTA including relevant aspects of staffing policy
- to determine National Goals, Objectives and Priorities for vocational education and training
- to determine a National Strategic Plan on Training Policy based on advice from the ANTA, consistent with agreed National Goals, Objectives and Priorities
- to determine, in the context of the National Strategic Plan, the principles to be applied for the allocation of funding between States and for any national programs
- to provide annual advice to assist the Commonwealth Minister in Commonwealth decisions on growth funding requirements
- to agree planning parameters and profiles for the delivery of

SCHEDULE (continued)

vocational education and training nationally

- to ensure that the ANTA operates in an effective and efficient manner
- to resolve any dispute between the ANTA and a State training agency or any other issue raised by a Minister
- to give references to the ANTA on other issues of training policy
- to be accountable to State and Commonwealth Parliaments for the operation of the ANTA and the expenditure of funds
- to approve an annual national training report.

Australian National Training Authority (ANTA)

7. The ANTA will be a board of acknowledged independent experts set up as a Commonwealth statutory authority with members appointed through the Commonwealth Executive Council consistent with the decision of the Ministerial Council.

8. It will consist of 5 members appointed for 3 years.

9. The functions of the ANTA will include:

- based on advice from State training agencies and, where appropriate, in consultation with National Industry Training Advisory Bodies (ITABs), to develop for the consideration of the Ministerial Council:
 - a draft National Strategic Plan; and
 - aspects of training policy in response to references from the Ministerial Council
- to initiate draft references on aspects of training policy, for the approval of the Ministerial Council
- to advise the Ministerial Council, in the context of the National Strategic Plan, of the principles to be applied for the allocation of funding between States
- to provide information and advice to the Ministerial Council to

SCHEDULE (continued)

assist the Commonwealth Minister to make decisions on growth funding levels

- to provide information and advice to assist the Ministerial Council to make decisions on planning parameters
- to develop, in conjunction with State training agencies, detailed State Training Profiles based on the National Strategic Plan once approved by the Ministerial Council, and to submit the profiles to the Ministerial Council with advice on the agreement or otherwise which has been reached in their development
- to develop, in conjunction with State training agencies, an efficient and quality service provision
- to receive from each State an amount at least equal to the amount of its own source funding for vocational education and training in that State (see paragraph 31)
- to receive Commonwealth funds for vocational education and training (see paragraph 36)
- to allocate and remit funding to the State training agencies on the basis of principles determined by the Ministerial Council and on condition that each will receive an amount at least equivalent to that which that State has provided to the ANTA
- to administer any programs agreed by the Ministerial Council as requiring national delivery within guidelines approved by the Ministerial Council
- to be responsible for ensuring that comprehensive up-to-date national statistical data are available on relevant aspects of training
- to provide an integrated annual report for approval by the Ministerial Council which incorporates reports received from State training agencies in an agreed format.

State training agencies

- 10.** State training agencies will be distinct bodies in the context of a

SCHEDULE (continued)

national training system with responsibility for vocational education and training within their own borders consistent with the agreed National Strategic Plan on training policy and the agreed state training profile. State training agencies will be accountable to State Ministers and parliaments for the operational responsibilities of their agencies and accountable to the Ministerial Council on matters of national policy. The relationship between State training agencies and ANTA will be formally defined in Commonwealth and State legislation consistent with this agreement.

11. The functions of the State training agencies will include:

- to provide to the ANTA policy advice and information on training needs and the funding implications of these needs, developed in consultation with all interested stakeholders including State government and industry
- to develop, in conjunction with the ANTA, detailed State Training Profiles based on the National Strategic Plan and in accordance with agreed planning parameters
- to ensure that the management of the State training system including the planning, regulation and provision of public and private training at State and Territory level is in accordance with the National Strategic Plan and agreed State Profile
 - including the allocation of resources within individual States and Territories on a program and geographic basis
- to provide annually to the ANTA a report on performance in an agreed format to enable the compilation of an annual integrated report for approval by the Ministerial Council in addition to any reporting required by the relevant state.

Industry

12. Industry would be involved in key aspects of the new National System, including

- through membership on the ANTA, by participating in the development of national policy and priorities

SCHEDULE (continued)

- through participation in the State training agencies and involvement in the development of State Training profiles

and, in addition,

- the National ITABs will be a key source of advice to the ANTA in the development of national policy and priorities
- State ITABs will be consulted in the development of State Profiles and provide input to national plans to the State training agencies
- the precise industry consultative mechanism at the State level will be a matter for the State government. It is envisaged that consultative mechanisms will also involve other stakeholders.

Main decision making processes

13. The Ministerial Council will develop and endorse agreed national objectives and priorities for vocational education and training.

14. State training agencies will provide data and advice to the ANTA on the needs and priorities of the sector, including funding implications.

15. State training agencies' input will be compiled in consultation with other relevant stakeholders as appropriate.

16. The input from the State training agencies is aggregated by the ANTA and considered in the context of national objectives, priorities and needs.

17. The ANTA will prepare a draft National Strategic Plan setting strategic directions for vocational education and training system over the medium term (3 to 5 years). The draft National Strategic Plan will be based on the national objectives and priorities endorsed by Ministers, input from State training agencies and consideration of national issues. The draft Plan will also address issues of efficiency and effectiveness. The draft National Strategic Plan and draft principles to be applied for the allocation of funds between the States, will be forwarded to the Ministerial Council for approval.

SCHEDULE (continued)

18. The ANTA will also prepare, for the Ministerial Council's consideration, advice on the triennial planning parameters focussing on the following program year.

19. The States and the Commonwealth will jointly fund the vocational education and training system through the ANTA (subject to any State's decision to hand over responsibility to the Commonwealth). States will maintain (and in some cases lift) their current effort, as outlined below. The Commonwealth will fund growth for the sector on a continuing basis and, for 1993–95, provide funding as outlined in *One Nation*. The ANTA will provide information and advice to the Ministerial Council to assist the Commonwealth Minister to make decisions on growth funding levels.

20. The Ministerial Council will amend and/or approve the National Strategic Plan and the planning parameters.

21. The Ministerial Council will return the approved National Strategic Plan and the planning parameters to the ANTA for use in the development of detailed planning profiles in conjunction with each State training agency.

22. Following Budget decisions, the Ministerial Council will provide the ANTA with advice on the quantum of funds available. It will also transmit the principles to be applied by ANTA to determine the allocation of funds across the States.

23. State training agencies will develop in conjunction with the ANTA detailed State Training Profiles based on the National Strategic Plan and consistent with the planning parameters.

24. The ANTA will advise the Ministerial Council on the agreement or otherwise which has been reached in the development of the State Profile and remit the State Profile to the Ministerial Council.

25. Where the ANTA and the State training agency cannot reach agreement about the profile, the matter will be referred to the Ministerial Council for resolution.

26. Once approved by the Ministerial Council, the planning profile will be implemented.

27. State training agencies will have responsibility for implementation of

SCHEDULE (continued)

approved State Training Profiles within their borders.

28. Within the scope of the ANTA's responsibilities, training programs and services will be managed through State training agencies except for programs agreed by the Ministerial Council as requiring national delivery which would be administered by the ANTA within guidelines approved by the Ministerial Council.

29. Each State training agency will provide annually to the ANTA a report on performance in an agreed format and ANTA will provide an annual integrated Report to the Ministerial Council for tabling in respective Parliaments.

Funding arrangements

30. Except where a State relinquishes financial responsibility, States will pass to the ANTA an amount equal to their own-source State funding for vocational education and training. An equal amount will be returned to respective States and Territories along with the Commonwealth funds as specified in paragraphs 32 and 33.

31. States will at least maintain their effort for vocational education and training on an ongoing basis. The Commonwealth and States are committed to the development of agreed outcomes measures of effort for agreement by the commencement of 1993. Pending such agreement being reached and agreement to a timetable for subsequent implementation, States will maintain 1992 effort in real terms. On the basis of an early move to measure the vocational education and training system in each State on an outcome basis, any State which is demonstrably underachieving would agree to increase its effort to an agreed level in outcome terms. In the interim there may be agreed arrangements for those States to increase their funding contributions.

32. The Commonwealth will maintain its current level of financial support for vocational education and training under States Grants arrangements, plus the \$100 m in TAFE recurrent funding provided in the Economic Statement of November 1991 which will be distributed under existing arrangements.

SCHEDULE (continued)

33. The Commonwealth will provide growth funding on a continuing basis, including the \$70 m nationally in each year of the 1993–95 triennium as announced in One Nation. All growth funding for calendar 1993 will be allocated on a proportional basis in accordance with relevant population shares. For 1994 and 1995, 80% of cumulative growth funds (ie, \$112 m in 1994 and \$168 m in 1995) will be allocated on the same basis, with the balance to be allocated by the Ministerial Council on the recommendation of ANTA having regard to assessed performance against agreed objectives and other relevant factors.

34. The funds described in paragraphs 32 and 33 will be passed to the ANTA, for on passing to State training agencies or to other parties as appropriate in the case of agreed national projects. For any given year, pending the agreement by the Ministerial Council regarding the State Profile, the State training agency will continue to operate on the basis of the funds and profile agreed for the previous year. When agreement is reached the growth provisions prescribed in paragraph 33 will obtain.

35. All States will share in growth funds according to principles established by the Ministerial Council except insofar as the circumstances outlined in paragraph 34 would prevent a State or Territory accessing growth funds for a particular year.

36. To the maximum extent possible, Commonwealth government-funded training programs should be funded through ANTA arrangements. Existing Commonwealth programs should be allocated on a functional basis in accordance with a set of guiding principles. Under those principles:

- the Commonwealth would retain responsibility for those programs which:
 - cover employment and migration and relate directly to its own areas of responsibility;
 - provide income support to individuals or training subsidies to employers;
 - are counter-cyclical in nature; or
 - provide training opportunities to client groups for which the

SCHEDULE (continued)

Commonwealth has a special responsibility (eg, Aboriginals);

- State governments would assume responsibility for those programs which relate directly to their own responsibilities for the regulation and delivery of training and which do not have a broader national purpose;
- furthermore ANTA should be advised on Commonwealth labour market programs and report on their impact on national vocational education and training policy and on State Training Profiles;
- all general recurrent and capital grants to TAFE currently provided under States Grants (TAFE Assistance) legislation would be passed to ANTA under the arrangements set out at paragraph 34 above. In addition, ANTA would assume responsibility for programs which support training activities and services which are national in scope and purpose (this includes after its establishment the national aspects of the new Australian Vocational Certificate Training System); and provide operating support for the national Industry Training Advisory Body (ITAB) network;
- existing arrangements would continue to apply in relation to the National Training Board, and the National Centre for Vocational Education Research which would report to the Ministerial Council.

The Commonwealth and the States remain committed to improvements in coordination and planning arrangements for the training elements of labour market programs, consistent with the MOVEET resolutions of August 1991 and June 1992. The role of ANTA in this respect will need to be developed and this and any other matters which are left unresolved by the provisions of paragraph 36 should be resolved before 1 September 1992.

37. Subject to paragraph 38, if a State(s) were to relinquish financial responsibility for vocational education and training (by way of an adjustment to its FAGs) but others do not, there would be no disturbance to

SCHEDULE (continued)

the determination of per capita relativities by the Commonwealth Grants Commission. That is, the following principles would apply

- that vocational education and training continue to form part of the fiscal equalisation process
- any recurrent Commonwealth own purpose outlays (replacing former State outlays) should be treated as notional SPPs in the State where the expenditure occurs
- such notional SPPs should be treated by the inclusion approach.

38. Grants Commission treatment would have to be kept under review by the Premiers' Conference in the light of the number of States relinquishing financial responsibility.

39. A State that relinquishes funding responsibility for vocational education and training would retain its voting rights on the Ministerial Council.

40. This agreement comes into force on 1 January 1994. Transitional arrangements, including provision for an interim board of the ANTA, will be determined by the Ministerial Council by 1 September 1992. The agreement will be subject to review before the end of 1995.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 October 1998. Future amendments of the Vocational Education, Training and Employment Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Vocational Education, Training and
Employment Act 1991*

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 12 of 1994	21 April 1994
1A	to Act No. 87 of 1994	10 July 1996
1B	to Act No. 1 of 1997	2 May 1997
1C	to Act No. 1 of 1997	4 July 1997

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1
Renumbered provisions	1

6 List of legislation

Vocational Education, Training and Employment Act 1991 No. 43

date of assent 5 August 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 28 October 1991 (1991 SL No. 101)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 1

date of assent 17 December 1991

commenced on date of assent (see s 2)

Vocational Education, Training and Employment Amendment Act 1993 No. 81

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 28 January 1994 (1994 SL No. 16)

Industrial Relations Reform Act 1994 No. 12 pts 1, 4

date of assent 31 March 1994

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 2

date of assent 1 December 1994

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Education (School Curriculum P–10) Act 1996 No. 65 ss 1–2, 52 sch 2

date of assent 9 December 1996

commenced on date of assent

Workplace Relations Act 1997 No. 1 ss 1–2, 495 sch 4

date of assent 14 February 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 27 March 1997 (1997 SL No. 77)

7 List of annotations

Objects

s 3 amd 1993 No. 81 s 4

Interpretation

- s 4** def “**accredit**” om 1993 No. 81 s 5(1)
 def “**accreditation**” ins 1993 No. 81 s 5(2)
 def “**accredited course**” sub 1991 No. 97 s 3 sch 1
 om 1993 No. 81 s 5(1)
 def “**ANTA**” ins 1993 No. 81 s 5(2)
 def “**ANTA Act**” ins 1993 No. 81 s 5(2)
 def “**apprentice**” sub 1993 No. 81 s 5
 def “**apprenticeship**” ins 1993 No. 81 s 5(2)
 def “**apprenticeship calling**” sub 1993 No. 81 s 5
 def “**approved training organisation**” ins 1993 No. 81 s 5(2)
 def “**approved training scheme**” ins 1993 No. 81 s 5(2)
 def “**award**” ins 1993 No. 81 s 5(2)
 def “**award or industrial agreement**” om 1993 No. 81 s 5(1)
 def “**chief executive**” ins 1993 No. 81 s 5(2)
 def “**commencement of this Act**” om 1993 No. 81 s 5(1)
 def “**course**” ins 1993 No. 81 s 5(2)
 def “**Director-General**” om 1993 No. 81 s 5(1)
 def “**eligible apprentice**” om 1993 No. 81 s 5(1)
 def “**eligible trainee**” om 1993 No. 81 s 5(1)
 def “**indenture**” om 1993 No. 81 s 5(1)
 def “**industrial award or industrial agreement**” ins 1993 No. 81 s 5(2)
 om 1997 No. 1 s 495 sch 4
 def “**industrial award**” ins 1997 No. 1 s 495 sch 4
 def “**industrial inspector**” ins 1997 No. 1 s 495 sch 4
 def “**industrial instrument**” ins 1997 No. 1 s 495 sch 4
 def “**industrial organisation**” sub 1997 No. 1 s 495 sch 4
 def “**Ministerial Council**” ins 1993 No. 81 s 5(2)
 def “**National Statement**” ins 1993 No. 81 s 5(2)
 def “**National Strategic Plan**” ins 1993 No. 81 s 5(2)
 def “**ratification**” om 1993 No. 81 s 5(1)
 def “**recognition**” ins 1993 No. 81 s 5(2)
 def “**registration**” ins 1993 No. 81 s 5(2)
 amd 1996 No. 65 s 52 sch 2; 1997 No. 1 s 495 sch 4 (amdt inoperative
 as previous amdt already made relevant changes)
 def “**short course**” ins 1993 No. 81 s 5(2)
 def “**State Training Profile**” ins 1993 No. 81 s 5(2)
 def “**traineeship**” ins 1993 No. 81 s 5(2)
 def “**training agreement**” sub 1993 No. 81 s 5
 def “**training program**” ins 1993 No. 81 s 5(2)

Membership of commission

- s 7** amd 1993 No. 81 s 6

Functions of commission

- s 9** amd 1993 No. 81 ss 7, 3 sch; 1997 No. 1 s 495 sch 4

Functions of commission in relation to ANTA

- s 10** ins 1993 No. 81 s 8

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Powers of commission

s 11 amd 1993 No. 81 s 9

Commission is a statutory body

s 11A ins 1996 No. 54 s 9 sch

Commission's rules

s 13 amd 1993 No. 81 s 10; 1996 No. 65 s 52 sch 2; 1997 No. 1 s 459 sch 4
(amdt inoperative as previous amdt already made relevant change)

Constitution of State Training Council

s 15 amd 1993 No. 81 s 3 sch

Functions and powers of State Training Council

s 16 amd 1993 No. 81 s 3 sch

Constitution of State Planning and Development Council

s 17 amd 1993 No. 81 s 3 sch

Constitution of Accreditation Council

s 19 amd 1993 No. 81 s 3 sch

Functions and powers of Accreditation Council

s 20 amd 1993 No. 81 s 11; 1996 No. 65 s 52 sch 2; 1997 No. 1 s 495 sch 4
(amdt inoperative as previous amdt already made relevant change)

Time for constitution of commission or standing committees

s 2.16 om 1993 No. 81 s 3 sch

Term of appointment

s 22 amd 1993 No. 81 s 3 sch

Power of delegation by commission or standing committees

s 26 amd 1996 No. 65 s 52 sch 2; 1997 No. 1 s 495 sch 4 (amdt inoperative as
previous amdt already made relevant change)

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

s 27 amd 1993 No. 81 s 3 sch

Remuneration to members of commission, standing committees and other committees

s 30 amd 1993 No. 81 s 3 sch

Chief executive is corporation sole

prov hdg sub 1993 No. 81 s 3 sch

s 31 amd 1993 No. 81 s 3 sch

Chief executive subject to direction of the Minister

prov hdg amd 1993 No. 81 s 3 sch

s 32 amd 1993 No. 81 s 3 sch

Corporation is statutory body

s 33A ins 1996 No. 54 s 9 sch

Powers incident to maintaining State colleges

s 38 amd 1993 No. 81 s 3 sch

*Vocational Education, Training and
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Trespass on State colleges

s 39 amd 1993 No. 81 s 3 sch

Recording schemes in land register

s 46 amd 1993 No. 81 s 3 sch

Provision for payment of fees

s 2.43 om 1993 No. 81 s 3 sch

Commission employees etc. employed under Public Service Act

s 49 sub 1996 No. 37 s 147 sch 2

Engagement of other persons

s 50 om 1996 No. 37 s 147 sch 2

Appointment of training or welfare consultants

s 51 om 1996 No. 37 s 147 sch 2

Establishment and constitution of councils

s 52 amd 1993 No. 81 s 12

Functions of State college council

s 53 amd 1993 No. 81 s 3 sch

Division 8—ANTA

div hdg ins 1993 No. 81 s 13

Conferral of functions on ANTA in relation to State

s 59 ins 1993 No. 81 s 13

Powers of ANTA in State

s 60 ins 1993 No. 81 s 13

Conduct of unrecognised establishment required to be recognised

s 64 amd 1993 No. 81 s 3 sch

Cancellation or suspension of recognition as approved training organisation

prov hdg sub 1993 No. 81 s 3 sch

s 65 amd 1993 No. 81 s 3 sch

Offence re advertising vocational education and training establishment or program

s 66 amd 1993 No. 81 ss 14, 3 sch

Control over matters about the conferring of awards

s 67 sub 1993 No. 81 s 15

amd 1996 No. 65 s 52 sch 2; 1997 No. 1 s 495 sch 4 (amdt inoperative as previous amdt already made relevant change)

Division 2—Approved training schemes

div hdg sub 1993 No. 81 s 16

Approved training schemes

s 68 sub 1993 No. 81 s 16

Prohibition of premium for training scheme

s 69 sub 1993 No. 81 s 16

Training agreements

s 70 sub 1993 No. 81 s 16

Trainee probation

s 71 sub 1993 No. 81 s 16

Amendment of training agreement

s 72 sub 1993 No. 81 s 16

Period of training scheme

s 73 sub 1993 No. 81 s 16

Temporary assignment of trainee

s 74 sub 1993 No. 81 s 16

Trainees attendance at courses of instruction

s 75 sub 1993 No. 81 s 16

Trainee or apprentice not required to be member of industrial organisation of employees

s 76 sub 1993 No. 81 s 16

Minimum qualifications for apprenticeships

s 77 sub 1993 No. 81 s 16

Restrictions on employing persons under 21 in an apprenticeship calling

s 78 sub 1993 No. 81 s 16

Employer's entitlement to apprentice

s 79 sub 1993 No. 81 s 16

Apprentice must be paid for course time

s 80 sub 1993 No. 81 s 16

Certificate after completion of apprenticeship

s 3.21 om 1993 No. 81 s 16

Apprentice not required to be member of industrial organisation of employees

s 3.22 om 1993 No. 81 s 16

Division 3—Traineeships

div hdg om 1993 No. 81 s 16

Training schemes

s 3.23 om 1993 No. 81 s 16

Prohibition of premium in respect of traineeship

s 3.24 om 1993 No. 81 s 16

Registration and approval of trainees

s 3.25 om 1993 No. 81 s 16

Register of trainees

s 3.26 om 1993 No. 81 s 16

Probationers

s 3.27 om 1993 No. 81 s 16

Training agreement

s 3.28 om 1993 No. 81 s 16

Completion of traineeship

s 3.29 om 1993 No. 81 s 16

Attendance at classes

s 3.30 om 1993 No. 81 s 16

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

s 81 amd 1993 No. 81 s 3 sch

Recognition of work or training

s 82 amd 1993 No. 81 s 3 sch

Fixing of wages payable to trainees

s 83 (prev s 3.38) renum 1993 No. 81 s 3 sch
amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Superannuation entitlements due to trainees

s 84 (prev s 3.39) renum 1993 No. 81 s 3 sch
amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Trainees' entitlements if not under training agreement

s 85 ins 1993 No. 81 s 3 sch

Fixing of wages payable to apprentices

s 86 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Fixing of other entitlements of apprentices

s 87 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Superannuation entitlements of apprentices

s 3.35 om 1993 No. 81 s 3 sch

Apprentices' entitlements if not under training agreement

prov hdg sub 1993 No. 81 s 3 sch

s 88 amd 1993 No. 81 s 3 sch

Fixing of wages payable to trainees

s 3.38 renum as s 83 1993 No. 81 s 3 sch

Superannuation entitlements due to trainees

s 3.39 renum as s 84 1993 No. 81 s 3 sch

Entitlements due to trainees other than under agreement

s 3.40 om 1993 No. 81 s 3 sch

Effect of death or retirement of a partner

s 90 amd 1993 No. 81 s 3 sch

Variation of indenture or training agreement

s 3.42 om 1993 No. 81 s 3 sch

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Inspection of time and wages record

s 92 amd 1993 No. 81 s 3 sch
 sub 1997 No. 1 s 495 sch 4

Training record

s 93 amd 1993 No. 81 s 3 sch

Period of absence from employment may be added to training period

s 94 sub 1993 No. 81 s 3 sch

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

s 95 amd 1993 No. 81 s 3 sch

Discipline

s 96 amd 1993 No. 81 s 3 sch; 1994 No. 87 s 3 sch 2

Cancellation of training agreement on request

prov hdg sub 1993 No. 81 s 3 sch
s 97 amd 1993 No. 81 s 3 sch

Provision of tools of trade

s 98 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Offences concerning employment of apprentices or trainees

s 99 amd 1993 No. 81 ss 17, 3 sch; 1997 No. 1 s 495 sch 4

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

s 100 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

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

s 101 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Accounting for moneys paid to training consultant or industrial inspector

s 102 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Recovery of unpaid superannuation contribution due to apprentice or trainee

s 103 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

State bound by Act

s 105 sub 1993 No. 81 s 3 sch

Act prevails in event of inconsistency

s 106 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Approved forms of State Training Council

s 107 sub 1993 No. 81 s 18

Conflict of interest

s 108 amd 1993 No. 81 s 3 sch

Holders of office to act honestly and with propriety

s 109 amd 1993 No. 81 s 3 sch

*Vocational Education, Training and
Employment Act 1991*

Protection of name of commission and corporation

s 110 amd 1993 No. 81 s 3 sch

Monitoring warrant

s 112 amd 1993 No. 81 s 3 sch; 1997 No. 1 s 495 sch 4

Duty to protect interests of employees to whom Act applies

s 115 amd 1993 No. 81 s 3 sch

Offences of obstruction and failing to answer questions

s 116 amd 1993 No. 81 s 3 sch

Attendance at investigation by commission or State Training Council

s 117 amd 1993 No. 81 s 3 sch

Destruction etc. of documents

s 118 amd 1993 No. 81 ss 19, 3 sch

Protection of confidentiality

s 119 amd 1993 No. 81 s 3 sch

General offence provision

s 4.16 om 1993 No. 81 s 3 sch

Evidentiary provisions

s 123 amd 1993 No. 81 s 20; 1997 No. 1 s 495 sch 4

Appeal to commission or Minister

s 124 amd 1993 No. 81 s 21

Regulations may be made

s 126 amd 1993 No. 81 s 3 sch

Validation of delegation under s 26

s 126A ins 1996 No. 65 s 52 sch 2
exp 9 December 1996 (see s 126A(2))

**SCHEDULE—NATIONAL VOCATIONAL EDUCATION AND TRAINING
STATEMENT**

reloc to after pt 5 1994 No. 12 s 43

PART 5—TRANSITIONAL PROVISIONS

pt hdg sub 1993 No. 81 s 22

Indentures become training agreements

s 127 sub 1993 No. 81 s 22

Apprenticeships and traineeships become approved training schemes

s 128 sub 1993 No. 81 s 22

References to repealed Act

s 129 orig s 129 sub 1993 No. 81 s 22
om R1 (see RA s 39)
prev ins 1996 No. 65 s 52 sch 2
exp 9 December 1997 (see s 129(3))
pres s 129 ins 1994 No. 87 s 3 sch 2

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Provisions relating to dissolved Corporation etc.
s 5.4 om 1993 No. 81 s 22

**SCHEDULE—NATIONAL VOCATIONAL EDUCATION AND TRAINING
STATEMENT**

ins 1993 No. 81 s 23
reloc 1994 No. 12 s 43

8 Table of renumbered provisions

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and Employment Amendment Act 1993 s 22

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