



APPRENTICESHIP AND TRAINEESHIP ACT 2001 No. 80

Changes to the Apprenticeship and Traineeship Act

The Act

- Consultation process in 2016 found that the Act is flexible and supports business needs in the dynamic and evolving NSW economy. But it needed updating to bring it into line with current business practice.
- Applies to employers, apprentices and trainees, registered training organisations and Apprenticeship Network Providers
- Provides important safeguards to employers, apprentices and trainees and particularly minors
- Changes were aimed at simplifying key processes around completion, certification, variations to training contracts and trade recognition
- The amendments commenced on 1 January 2018.
- The review of administrative policies and procedures is now underway.

Changes to the Apprenticeship and Traineeship Act

In Brief:

- Abolition of the Vocational Training Review Panel
 - Changes to Dispute Handling
 - Changes to Trade Recognition
 - Revised Powers for the Commissioner of Vocation Training
- Abolition of Craft Certificates and Certificates of Completion
- Stronger requirements for consultation around Training Plans
- Improved provisions around prohibited employers
- Penalty rates increased, and Penalty Notices introduced
- Staged implementation of new requirements, dependent on systems upgrades – commencing January 2018.

Changes to the Apprenticeship and Traineeship Act

Abolition of the Vocational Training Review Panel

- Powers of Panel moved to the Commissioner for Vocational Training
 - New procedures for Disputes Handling
 - Simplified procedures for Trade Recognition

Changes to the Apprenticeship and Traineeship Act

Disputes Handling

- The Commissioner will nominate a conciliator from a TS NSW regional office to try to broker a mutually agreed resolution to the complaint
- Where there is no resolution the Commissioner will make a determination which may involve advice from suitable industry representatives.
- The Commissioner may conduct a hearing involving both parties
- Parties dissatisfied with any decision of the Commissioner may apply for an Internal Review as required by NCAT under Section 53 of the Administrative Decisions Review Act.
- And a further appeal may be made to the NSW Civil and Administrative Tribunal (NCAT).

Changes to the Apprenticeship and Traineeship Act

Role of Conciliator

- As a first step, the Commissioner refers a dispute/complaint to a Conciliator (amended Section 40)
- A Conciliator (proposed for the Industry Training Officer) will attempt to bring the disputing parties to a settlement
- Conciliators will operate under delegation from the Commissioner.
- Conciliators will be appropriately trained in dispute resolution.

Changes to the Apprenticeship and Traineeship Act

Trade Recognition

- Applicants will go through a Registered Training Provider approved by Training Services NSW.
- The process will involve:
 - Recognition of Current Competency
 - Recognition of Prior Learning and,
 - The Commissioner will have powers to seek a Skills/Assessment Trade Test if deemed necessary
- Successful applicants will qualify for a Certificate of Proficiency
- Specific processes will apply for trades requiring a Certificate of Proficiency for trade licences eg, electrical trades where the Commissioner is *required* to consider the view of industrial representatives

Changes to the Apprenticeship and Traineeship Act

Expanded Powers for the Commissioner

- Create Vocational Training Guidelines – moved from Secretary
- Cancel and vary Training Contracts where appropriate, eg, if neither employer or apprentice/trainees can be contacted
- Handling of disputes and complaints – formerly the responsibility of the Vocational Training Review Panel (VTRP)
- Trade Recognition – formerly with the VTRP
- May seek independent assessment of qualification provided by RTOs, eg through the Smart and Skilled Quality Assurance process or Trade Recognition
- **However**, parties dissatisfied with any decision of the Commissioner may apply for an Internal Review and a further appeal to NSW Civil and Administrative Tribunal (NCAT).

Changes to the Apprenticeship and Traineeship Act

Strengthened Provisions around Training Plans (Section 12A)

- Imposition of Penalties for failure to lodge a Training Plan

Duties of the RTO (Section 16)

- Consult with the employer about progress
- 6 monthly reviews of Training Plans
- Notify the Commissioner following awarding of qualification
- Notify the Commissioner if the employer fails to allow apprentices to attend training, fails to allow on the job assessment or provide evidence of competence
- Training Services NSW Quality Assurance process will now include monitoring of Training Plan status and evidence of employer consultation

Changes to the Apprenticeship and Traineeship Act

Improved provisions around prohibited employers (Section 53)

- A Commissioner's prohibition order may be a full unlimited order

OR

- An order limited to particular circumstances
- Penalties for host employers placing an apprentice/trainees with a known prohibited employer

Changes to the Apprenticeship and Traineeship Act

- **Abolition of Craft and Completion Certificates.**
 - Craft and Completion Certificates are a record of the term of the apprenticeship/traineeship completed with the employer.
 - Formerly, may have been issued following a Trade Recognition process
- **Only the Certificate of Proficiency to be issued upon successful completion**
 - The Certificate of Proficiency signifies that an apprentice or trainee has completed the qualification from the registered training organisation and has been competent by the employer to industry standards.

Changes to the Apprenticeship and Traineeship Act

- **The category of ‘trainee apprentice’ has been abolished.**
 - Trainee apprenticeships are where the employer does not employ the apprentice for the whole term of the apprenticeship.
 - Traditionally, trainee apprentices have been employed in the construction industry, where employment could not always be assured for the entire term of an apprenticeship
- An employer may notify the Commissioner if they intend to terminate the employment of an apprentice or trainee if there is a downturn in work

Changes to the Apprenticeship and Traineeship Act

Changes to Penalty Regime

- Increased maximum penalties for offences to align with other modern legislative frameworks
 - Penalties have not been increased since the Act was created in 2001.
 - Increases are consistent with other NSW Government legislation
- Offences will be prescribed as penalty notice offences in the Regulation
 - These are “on-the-spot” fines that don’t need to go to court, but can be imposed by designated officers after due warnings. Offenders will still have an option to have matters dealt with by the courts, but penalties imposed by courts may be higher.

Changes to the Apprenticeship and Traineeship Act

Staged Implementation

- First stage commences 1 January 2018
 - Commissioner's powers
 - Trainee Apprentices abolished
 - No more Craft and Completion Certificates.
 - No further applications to VTRP for disputes hearings
 - New processes for Trade Recognition
 - Improved provisions for prohibited employers
 - Introduction of Penalty Notices and increased Penalty rates
 - NB: RTOs should ensure Training Plans are prepared rolled out as per current legislative requirements

Changes to the Apprenticeship and Traineeship Act

Staged Implementation

- 2nd Stage
 - Penalties for Training Plans introduced
- More detail is available on:

www.training.nsw.gov.au