



ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1981

No. 17 of 1981

An Act to make provision for industrial and commercial training; to repeal the Apprentices Act, 1950-1978; and for other purposes.

[Assented to 19 March 1981]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

Short title. 1. This Act may be cited as the "Industrial and Commercial Training Act, 1981".

Commence-ment. 2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement of Act. 3. This Act is arranged as follows:

PART I—PRELIMINARY

PART II—ADMINISTRATION

DIVISION I—INDUSTRIAL AND COMMERCIAL TRAINING COMMISSION

DIVISION II—THE FUNCTIONS OF THE COMMISSION

DIVISION III—TRAINING ADVISORY COMMITTEES

DIVISION IV—THE DISCIPLINARY COMMITTEE OF THE COMMISSION

DIVISION V—STAFF OF THE COMMISSION

DIVISION VI—POWERS OF ENTRY AND INSPECTION

PART III—FORMS OF TRAINING

DIVISION I—CONTRACTS OF TRAINING

DIVISION II—TRAINEE SCHEME

DIVISION III—COURSES OF PRE-VOCATIONAL TRAINING

PART IV—MISCELLANEOUS

PART I

Repeal and
transitional
provisions.

4. (1) The Apprentices Act, 1950-1978, is repealed.

(2) Any indentures of apprenticeship in force immediately before the commencement of this Act shall, subject to this Act, continue in force as if they were contracts of training.

(3) A determination, approval or decision of the Apprenticeship Commission in force under the repealed Act immediately before the commencement of this Act shall, subject to variation or revocation by the Commission under this Act, remain in force under this Act as if it were a determination, approval or decision of the Commission under this Act.

5. In this Act, unless the contrary intention appears—

Interpretation.

“apprentice” means a person whom another has agreed to train in a trade under a contract of training:

“the Commission” means the Industrial and Commercial Training Commission established under this Act:

“contract of training” means a contract (including an indenture of apprenticeship) under Division I of Part III in respect of training in a trade or other declared vocation:

“declared vocation” means—

(a) a trade;

or

(b) an occupation declared by regulation to be a declared vocation for the purposes of this Act:

“the disciplinary committee” means the disciplinary committee established under Division IV of Part II:

“occupation” includes any form of work in industry or commerce:

“pre-vocational training” means training designed as preparation for training in a trade or other declared vocation:

“trade” means an occupation declared by regulation to be a trade:

“training” means training (including courses of instruction, on-the-job training and off-the-job training) in the knowledge and skills required in industry or commerce.

6. (1) In the event of an inconsistency between this Act and the Industrial Conciliation and Arbitration Act, 1972-1979, or any regulation, award, order or industrial agreement made under that Act, the provisions of this Act prevail to the extent of the inconsistency.

Relation of
Act to other
Acts and
awards.

(2) Notwithstanding subsection (1), any provision of an award or industrial agreement requiring an employer to employ apprentices in preference to junior employees shall remain in full force and effect.

7. This Act binds the Crown.

Crown bound.

PART II

PART II

ADMINISTRATION

DIVISION I

DIVISION I—INDUSTRIAL AND COMMERCIAL TRAINING COMMISSION

Establishment
of the
Commission.

8. (1) There shall be a commission entitled the "Industrial and Commercial Training Commission".

(2) The Commission shall be under the control and direction of the Minister.

Constitution
of the
Commission.

9. The Commission shall consist of nine members, appointed by the Governor, of whom—

(a) one, who shall be a full-time member, shall be appointed to be Chairman of the Commission;

(b) one shall be the Director of the Department of Industrial Affairs and Employment or his nominee;

(c) one shall be the Director-General of Further Education or his nominee;

(d) three shall be persons nominated by the Minister, after consultation with employer associations (including the South Australian Employers' Federation Inc., the Chamber of Commerce and Industry, South Australia, Inc., the Master Builders' Association of South Australia Inc., and the Metal Industries Association, South Australia), to represent the interests of employers;

and

(e) three shall be persons nominated by the Minister, after consultation with the United Trades and Labor Council of South Australia, to represent the interests of employees.

Terms and
conditions of
office of
members of
Commission.

10. (1) The Chairman of the Commission shall be appointed for a term of office of five years and upon such conditions as the Governor determines, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Governor may appoint a person employed under the Public Service Act, 1967-1978, to be Deputy Chairman of the Commission and that person may attend the meetings of the Commission and, in the absence of the Chairman, shall act in the place of and have all the powers, authorities, functions and duties of the Chairman.

(3) A member of the Commission (other than the Chairman) shall be appointed—

(a) if he is one of the first members of the Commission—for a term of office not exceeding three years specified in the instrument of his appointment;

and

(b) in any other case—for a term of office of three years,

and upon such conditions as the Governor determines, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(4) Subject to subsection (5), the Governor may appoint a suitable person to be a deputy of a member of the Commission (other than the Chairman), and the deputy while acting in the absence of that member, shall have all the powers, authorities, functions and duties of that member.

(5) The provisions of this Act requiring nomination and consultation before the appointment of a member apply in relation to the appointment of a deputy of that member.

(6) The Governor may remove a member of the Commission from office for—

- (a) any breach of, or non-compliance with, the conditions of his appointment;
- (b) mental or physical incapacity that prevents him from satisfactorily carrying out the duties of his office;
- (c) neglect of duty;
- or
- (d) dishonourable conduct.

(7) The office of a member of the Commission shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (6).

(8) Upon the office of a member of the Commission becoming vacant, a person shall be appointed in accordance with this Act, to the vacant office, but where the office of a member becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed only for the balance of the term of his predecessor.

11. (1) The Chairman of the Commission shall be entitled to such salary, allowances and expenses as may be determined by the Governor. Remuneration and expenses.

(2) A member of the Commission (other than the Chairman) shall be entitled to such allowances and expenses as may be determined by the Governor.

12. (1) Five members of the Commission of whom—

Quorum, etc.

- (a) one must be the Chairman or the Deputy Chairman;
- (b) at least one must be a member appointed to represent the interests of employers;
- and
- (c) at least one must be a member appointed to represent the interests of employees,

shall constitute a quorum of the Commission.

(2) The Chairman or, in the absence of the Chairman, the Deputy Chairman shall preside at a meeting of the Commission.

PART II
DIVISION I

(3) A decision carried by a majority of the votes cast by the members of the Commission present at a meeting of the Commission shall be a decision of the Commission.

(4) Each member present at a meeting of the Commission shall be entitled to one vote on any matter arising for decision by the Commission at that meeting and, in the event of an equality of votes, the member presiding at the meeting shall have a second or casting vote.

(5) The Commission shall cause minutes to be kept of its proceedings.

(6) Subject to this Act, the proceedings of the Commission shall be conducted in such manner as the Commission may determine.

Delegation.

13. (1) The Commission may, by instrument in writing, delegate any of its powers or functions—

(a) to the Chairman or Deputy Chairman of the Commission;

or

(b) to a training advisory committee.

(2) A delegation under subsection (1) shall be revocable at will and shall not prevent the Commission from acting in any matter itself.

DIVISION II

DIVISION II—THE FUNCTIONS OF THE COMMISSION

**Functions
of the
Commission.**

14. (1) The functions of the Commission are—

(a) to inquire into, and keep under review, the training that is being, or should be, provided in order to develop the knowledge and skills required in industry and commerce;

(b) to inquire into, and keep under review, systems and methods of apprenticeship training and to report to the Minister upon such systems and methods and on the numbers of apprentices for the time being in training in the various trades;

(c) to make recommendations to the Minister relating to the occupations that should constitute trades or declared vocations;

(d) to determine the objectives, nature, syllabus content and duration of training in—

(i) trades and other declared vocations;

(ii) trainee schemes;

or

(iii) schemes of pre-vocational training;

(e) to determine matters relating to the entry into, observance, discharge, assignment, transfer, variation, suspension or cancellation of contracts of training (not being matters related to disciplining a party to a contract of training);

- (f) to determine matters relating to the training to be provided by employers to persons employed under contracts of training;
- (g) to approve facilities provided, or to be provided, at governmental or non-governmental institutions for the purposes of training in—
- (i) trades and other declared vocations;
 - (ii) trainee schemes;
- or
- (iii) schemes of pre-vocational training;
- (h) to assess by such means as the Commission thinks fit the competency of apprentices or other trainees;
- (i) to grant, or arrange for the granting of, certificates to persons completing programmes of training determined by the Commission;
- (j) to determine credits to be allowed in respect of the training required under this Act on the basis of training previously undertaken, or on any other basis;
- (k) to enter into reciprocal arrangements with appropriate bodies with respect to the recognition of industrial or commercial training qualifications;
- (l) to collect data and statistics in relation to industrial and commercial training;
- (m) to promote and encourage—
- (i) the implementation of industrial and commercial training programmes and participation by others in such programmes;
- and
- (ii) the establishment of off-the-job training centres by employers or groups of employers;
- (n) to advise the Minister—
- (i) on matters referred by the Minister to the Commission for advice;
- and
- (ii) generally in relation to the administration of this Act;
- and
- (o) to carry out any other functions and duties assigned to the Commission by or under this Act.

(2) The Commission shall, wherever practicable, consult and co-operate with governmental authorities, institutions, employer or employee associations or other persons or bodies that may be affected by recommendations that it may make or actions that it may take in the performance of its functions under this Act.

(3) The Commission may establish such committees and sub-committees as it thinks necessary to advise it upon any aspect of its functions under this Act.

PART II
DIVISION III

DIVISION III—TRAINING ADVISORY COMMITTEES

Establishment
of training
advisory
committees.

15. (1) The Minister may, upon the recommendation of the Commission, establish a training advisory committee in respect of any part of industry or commerce.

(2) A training advisory committee shall consist of not less than seven members appointed by the Minister, of whom—

(a) one shall be the Chairman of the Commission, or his nominee, who shall be chairman of the committee;

(b) one shall be the Director-General of Further Education, or his nominee;

(c) one shall be appointed to represent the Minister of the Commonwealth Government with responsibility for matters related to industrial and commercial training;

and

(d) the remainder shall comprise equal numbers of persons appointed to represent the interests of employers and employees, respectively, engaged in that part of industry or commerce for which the committee is being or has been established.

(3) A member shall not be appointed under subsection (2) (d) except after consultation with the relevant association of employers or employees.

(4) A training advisory committee may, with the approval of the Commission, co-opt such additional members as it thinks fit but a co-opted member shall not be entitled to vote on any matter arising for decision by the committee.

(5) The terms and conditions of office of a member of a training advisory committee shall be as determined by the Minister.

(6) Four members of a training advisory committee (of whom one must be the chairman of the committee, at least one must be a member appointed to represent the interests of employers and at least one must be a member appointed to represent the interests of employees) shall constitute a quorum of a training advisory committee.

(7) A decision carried by a majority of the votes of the members present at a meeting of a training advisory committee shall be a decision of the committee.

(8) Each member present at a meeting of a training advisory committee shall be entitled to one vote on any matter arising for decision by the committee at that meeting and, in the event of an equality of votes, the chairman shall have a second or casting vote.

(9) Subject to any direction of the Commission, the proceedings of a training advisory committee shall be conducted in such manner as it may determine.

Sub-
committees.

16. (1) A training advisory committee may establish sub-committees to assist it on any aspect of its functions.

(2) A sub-committee may be established in relation to a trade or group of trades or on any other basis, and, if established in relation to a trade or group of trades, shall be referred to as a "Trade Advisory Sub-Committee".

(3) A sub-committee established under this section shall consist of such members of the training advisory committee as the training advisory committee thinks fit, and may include persons who are not members of that training advisory committee.

(4) The membership of a Trade Advisory Sub-Committee established under this section must include equal numbers of members appointed to represent the interests of employers and members appointed to represent the interests of employees.

(5) The terms and conditions of office of a member of a sub-committee shall be as determined by the Commission.

(6) At any meeting of a sub-committee, at least one member appointed to represent the interests of employers and at least one member appointed to represent the interests of employees must be present.

(7) A decision carried by a majority of the votes of the members present at a meeting of a sub-committee shall be a decision of the sub-committee.

(8) Each member present at a meeting of a sub-committee shall be entitled to one vote on any matter arising for decision by the sub-committee at that meeting and, in the event of an equality of votes, the member presiding at the meeting shall have a second or casting vote.

(9) Subject to any direction of the training advisory committee, the proceedings of a sub-committee shall be conducted in such manner as it may determine.

17. The function of a training advisory committee established in respect of any part of industry or commerce is to advise and make recommendations to the Commission, either of its own motion or at the request of the Commission, on—

Function of training advisory committees.

- (a) apprenticeship in that part of industry or commerce;
- (b) any other aspect of the training that is being provided for trades or occupations in that part of industry or commerce;
- or
- (c) any new forms of training that should be introduced in order to develop knowledge or skills required in that part of industry or commerce.

DIVISION IV—THE DISCIPLINARY COMMITTEE OF THE COMMISSION

DIVISION IV

18. (1) There shall be a committee entitled the "Disciplinary Committee of the Industrial and Commercial Training Commission".

The Disciplinary Committee.

(2) In relation to disciplinary proceedings the disciplinary committee shall consist of—

- (a) the Chairman, or the Deputy Chairman, of the Commission;
- and
- (b) two other members of the Commission—
 - (i) one being a member appointed to represent the interests of employers;
 - and
 - (ii) one being a member appointed to represent the interests of employees,

appointed by the Commission to be members of the disciplinary committee in relation to the proceedings in question.

PART II
DIVISION IV

(3) The disciplinary committee is not subject to control or direction by the Commission, and, subject to subsection (4), the Commission has no power to overrule or otherwise interfere with a decision or order of the disciplinary committee.

(4) If the Commission, acting at the direction of the Minister, requests the disciplinary committee to review its decision or order upon any matter, the disciplinary committee shall review the decision or order and may, upon the review, confirm, vary or revoke the decision or order subject to the review, or make any other decision or order in substitution for that decision or order.

DIVISION V

Staff of the
Commission.

DIVISION V—STAFF OF THE COMMISSION

19. (1) The Governor may, subject to the Public Service Act, 1967-1981, appoint such officers and employees as are required for the proper administration of this Act.

(2) A person appointed under subsection (1) shall hold office subject to, and in accordance with, the Public Service Act, 1967-1981.

(3) The Commission may, with the consent of a Minister administering any Department of the Public Service, make use of the services of officers employed in that Department.

DIVISION VI

Powers of
entry and
inspection.

DIVISION VI—POWERS OF ENTRY AND INSPECTION

20. (1) For the purposes of this Act, a member of the Commission, or a person authorized by the Commission to exercise the powers conferred by this section may—

- (a) enter at any reasonable time any place or premises in which industrial or commercial training is provided;
 - (b) inspect the place or premises, anything in the place or premises, and work in progress in the place or premises;
 - (c) question any person involved in training on any matter relevant to the inspection;
- and
- (d) require the production of any record or document required to be kept by or under this Act and inspect, examine and copy it.

(2) Subject to subsection (3), a person shall not—

- (a) hinder or obstruct a member of the Commission or other person in the exercise of a power conferred by this section;
- (b) refuse or fail to answer truthfully to the best of his knowledge, information and belief any question put to him pursuant to subsection (1);

or

- (c) without lawful excuse, fail to comply with a requirement made under this section.

Penalty: Five hundred dollars.

(3) A person is not obliged to answer a question put to him under this section if the answer would tend to incriminate him of an offence.

PART III

PART III

FORMS OF TRAINING

DIVISION I—CONTRACTS OF TRAINING

DIVISION I

21. (1) An employer shall not undertake to train a person (whether as an apprentice or otherwise) in a declared vocation except in pursuance of a contract of training.

Training in declared vocations to be offered only under prescribed conditions.

Penalty: Five hundred dollars.

(2) Subsection (1) does not apply in relation to the further training or re-training of a person who has already completed the training required under a contract of training, or who has an equivalent trade or vocational qualification.

(3) A contract of training—

(a) shall be in the prescribed form that is relevant to the trade or other declared vocation to which the contract relates;
and

(b) shall contain the appropriate prescribed conditions.

(4) An employer shall not employ an apprentice or other trainee under a contract of training unless—

(a) the place in which he is to be employed;

(b) the equipment and methods to be used in training;

and

(c) the persons who are to supervise his work,

have been approved by the Commission.

Penalty: Five hundred dollars.

(5) An approval under subsection (4) may be given subject to conditions—

(a) limiting the number of apprentices or other trainees that the employer may have in his employment at any one time;

and

(b) as to such other matters as the Commission thinks fit,

and may be revoked for breach of a condition.

(6) An employer shall within two weeks after employing a person under a contract of training furnish the Commission with a copy of the contract of training and with the particulars required by the regulations.

Penalty: Five hundred dollars.

(7) Two or more employers may, with the approval of the Commission, enter into a contract of training with the same apprentice or other trainee.

(8) The Commission may enter into a contract of training, assuming the rights and obligations of an employer under the contract.

(9) The Commission shall not exercise its powers under subsection (8) except—

(a) upon a temporary basis;

or

(b) where it is not reasonably practicable for some other employer to enter into the contract of training.

PART III
DIVISION I

(10) Any party to a contract of training may, within three months after the apprentice or other trainee commences work under the contract, terminate the contract by giving notice in writing to the other party or parties to the contract.

(11) Where a contract of training is terminated under subsection (10), the employer shall, within seven days of the termination, notify the Commission, in writing, of the termination.

Penalty: Five hundred dollars.

(12) Where a contract of training is transferred or assigned from one employer to another, the employer to whom the contract is transferred or assigned shall, within seven days of the transfer or assignment, notify the Commission, in writing, of the transfer or assignment.

Penalty: Five hundred dollars.

Age not to be
disqualification.

22. No person is, by reason of his age, disqualified from entering into a contract of training.

Term of
contract of
training.

23. (1) The term of a contract of training shall be determined by or in accordance with the regulations.

(2) Where an apprentice or other trainee has completed at least three-quarters of the term of his contract of training, and the Commission is satisfied of the competence of the apprentice or other trainee, the Commission may, of its own motion, or on the application of all parties to the contract, relieve the apprentice or other trainee of his obligations under the contract, and he shall then be deemed to have completed the training required of him under the contract.

(3) The Commission may, by notice in writing to the parties to a contract of training, increase or reduce the term of the contract.

(4) This section does not prejudice the extension of the term of a contract of training by the disciplinary committee.

Contract of
training to
provide for
employment.

24. (1) A contract of training must provide for the employment of the apprentice or other trainee who is to be trained under the contract.

(2) The Commission may, upon the application of all parties to a contract of training, alter the contract so that it provides for part-time training instead of full-time training, or full-time training instead of part-time training.

Requirement
to attend
approved
courses of
training.

25. (1) An apprentice or other trainee under a contract of training is required—

- (a) to attend such courses of instruction as may be determined by the Commission;
- (b) to comply with requirements of the Commission as to hours of attendance at approved courses of instruction;
- (c) to comply with requirements of the regulations as to total hours of attendance at approved courses of instruction;
- (d) to complete the courses of instruction that he is required to attend to the satisfaction of the Commission;

and

(e) to comply with any other requirements of the Commission in relation to his training.

(2) An employer shall permit an apprentice or other trainee employed by him under a contract of training to carry out his obligations under this section.

Penalty: Five hundred dollars.

26. (1) Where a party to a contract of training contravenes, or fails to comply with, a provision of the contract, or of this Act, the other party to the contract may refer the matter to the disciplinary committee. Discipline.

(2) If an employer has reasonable grounds to believe that an apprentice or other trainee employed by the employer under a contract of training is guilty of wilful and serious misconduct, the employer may suspend him from his employment under the contract, and shall, in that event, refer the matter forthwith to the disciplinary committee and confirm the reference in writing within three days of the suspension.

Penalty: Five hundred dollars.

(3) A suspension under subsection (2) shall, unless confirmed by the disciplinary committee, not operate for more than seven working days.

(4) Where the Commission suspects on reasonable grounds that a party to a contract of training has contravened, or failed to comply with, a provision of the contract or this Act, it may refer the matter to the disciplinary committee.

(5) The disciplinary committee shall inquire into any matter referred to it under this section, and may, if it thinks fit—

- (a) reprimand the party in default;
- (b) suspend a person from his employment under a contract of training;
- (c) confirm or revoke a suspension imposed under subsection (2) and, in the event of revocation, order the employer to pay any wages that would, but for the suspension, have been payable under the contract;
- (d) extend the term of a contract of training;
- (e) cancel a contract of training;
- (f) make any consequential orders that the committee thinks necessary or expedient.

(6) A person shall not contravene, or fail to comply with, an order of the disciplinary committee under this section.

Penalty: Five hundred dollars.

(7) The disciplinary committee may consult with the relevant training advisory committee (if any) before exercising its powers under this section.

(8) Notice shall be given to the Commission of the cancellation of a contract of training under subsection (5).

(9) A suspension imposed under this section shall not operate for a period in excess of four weeks.

PART III
DIVISION II

Schemes of training.

DIVISION II—TRAINEE SCHEMES

27. (1) The Commission may determine and approve such schemes of training as it considers necessary or desirable to advance knowledge and skills required in industry and commerce.

(2) This section does not apply to training in trades or other declared vocations.

(3) A scheme shall provide for such courses of instruction, on-the-job training and off-the-job training as the Commission considers necessary.

(4) The Commission may issue, or arrange for the issue of, an appropriate certificate to a person who successfully completes a scheme of training under this section.

DIVISION III

Courses of pre-vocational training.

DIVISION III—COURSES OF PRE-VOCATIONAL TRAINING

28. (1) The Commission may determine and approve courses of pre-vocational training.

(2) A person who successfully completes a course of pre-vocational training shall be entitled to such credits in respect of the training required for the relevant trade or other declared vocation as may be determined by the Commission.

PART IV

Report.

PART IV

MISCELLANEOUS

29. (1) The Commission shall, within three months after the end of each financial year, present a report to the Minister on the work of the Commission during that financial year.

(2) The Minister shall, as soon as practicable after receiving a report under subsection (1) cause copies of the report to be laid before both Houses of Parliament.

Validity of acts of Commission, etc., and immunity.

30. (1) An act or proceeding of the Commission, or of a committee or sub-committee established by or under this Act, shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the appointment of a member or purported member, an act or proceeding of the Commission, committee or sub-committee shall be as valid and effectual as if the member or purported member had been duly appointed.

(2) No liability shall attach to a member of the Commission or of a committee or sub-committee established by or under this Act, or to any other person, for any act or omission by him in the exercise or discharge of his powers, functions or duties under this Act.

(3) A liability that would, but for subsection (2), lie against a person shall lie instead against the Crown.

31. (1) An employer who employs persons under contracts of training shall keep such records as are prescribed. Making and retention of records.

Penalty: Five hundred dollars.

(2) An employer shall retain a record kept by him under subsection (1) for at least two years after the date on which the record was made.

Penalty: Five hundred dollars.

32. Proceedings for offences against this Act shall be disposed of summarily. Proceedings.

33. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient— Regulations.

(a) for the purposes of this Act;

or

(b) for the purpose of dealing with matters relevant to any aspect of training to which this Act applies, or to the rights and obligations of parties to a contract of training.

(2) A regulation may provide a penalty (not exceeding five hundred dollars) for breach of, or non-compliance with the regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor