

1989

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

VOCATIONAL TRAINING BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by the authority of
Mr Paul Whalan MLA, Minister
for Industry, Employment and Education)

13322/89 Cat. No. 89 4665 6

VOCATIONAL TRAINING BILL 1989

OUTLINE

The Vocational Training Bill 1989 (the Bill) establishes the Vocational Training Authority (the Authority) which supersedes the Apprenticeship Board established under the Apprenticeship Act 1936. The Bill repeals the Apprenticeship Act.

The Authority is a tripartite body comprising 9 appointed members and the Director of the ACT Institute of Technical and Further Education, who is a member ex officio. Three appointed members represent the interests of trainees/employees, 3 the interests of employers and 3 are appointed by the Minister. Members may be appointed for up to 5 years, on terms and conditions and for remuneration which are determined by the Commonwealth Remuneration Tribunal or the Minister.

The Authority's main functions are to administer apprenticeships and traineeships in the Territory, to promote industrial and commercial training and to advise the Minister on vocational training matters. It has powers sufficient to carry out these functions.

The Authority is under the control of the Minister who is able to direct it on policy to be followed. The Bill also requires the Authority to consult widely among those with interests in vocational training when performing its functions.

The new legislative scheme is wider in scope than the apprenticeship scheme it replaces and is more flexible to ensure that vocational training adapts to changing circumstances and meets the needs of industry and commerce and of the Territory at large.

The full regulatory measures of the new scheme apply subject to any relevant Federal industrial award and only to vocations in industry and commerce which are prescribed in the regulations. The Authority also has power to establish training schemes in other occupations. Prescribed vocations are not necessarily limited to traditional apprenticeship trades, although initially these trades will form the bulk of vocations under the new scheme.

The new legislative scheme revolves around the central notion of the contract of training which replaces the indenture of apprenticeship. The contract of training serves the same purpose as an indenture, namely to define the relationship between the employer and the trainee, and is also the mechanism through which the regulatory provisions take effect. The Authority has power to determine the content of contracts of training and the Bill itself specifies certain fundamental provisions which every contract of training must contain. Although it is proposed that contracts of training will be standardised, the Bill enables the Authority to approve privately negotiated contracts of training.

A contract of training is also a contract of employment. It is intended that the general law of contract will apply except where the Bill makes special provision.

The Bill sets up a Grievances Committee (the Committee) to exercise the disciplinary and dispute settling functions under the new scheme. Although the Committee consists of the Chairperson and two other members of the Authority, it acts independently of the Authority, which has no powers of direction over it. The Bill makes provision for the Committee's functions, powers and procedures. The Committee is designed to be a flexible and convenient forum for settling disputes between employers and trainees. In addition, the Bill provides for review by the Administrative Appeals Tribunal of decisions of the Authority and of the Committee. Neither avenue of appeal affects an individual's right to go to court at any time, if a dispute arises out of the contract of training itself.

FINANCIAL STATEMENT

Establishing the Authority itself will not lead to significant additional costs, although it is necessary to strengthen staffing in the Employment, Education and Training Branch and to undertake promotional activities. The additional costs will be as follows:

	1989/90	1990/91 and later years
	\$	\$
Staff (1 x ASO4, 2 x ASO3)	61 000	81 000
Other	25 000	25 000

VOCATIONAL TRAINING BILL 1989

CLAUSE NOTES

PART I - PRELIMINARY

Clause 1: Short title

Cites the short title of the Act as being the Vocational Training Act 1989.

Clause 2: - Commencement

Provides that the Act comes into operation on the date fixed by the Minister by notice in the Gazette.

Clause 3: Repeal

Repeals the Apprenticeship Act 1936 and all its subsequent amending Acts.

Clause 4: Position of Crown

This clause binds the Crown in right of the Territory. The Crown will not be liable to be prosecuted for an offence.

Clause 5: Matters covered by Federal Awards

This clause limits the Act from applying to any matter to which an award made or continued under the Industrial Relations Act 1988, except where the Act and the award can operate together.

Clause 6: Interpretation

Deals with interpretation of terms used in the Act.

PART II - VOCATIONAL TRAINING AUTHORITY

Division 1 - Establishment and powers

Clause 7: Establishment

This clause establishes the Authority.

Clause 8: Functions

This clause defines the functions of the Authority. These functions fall within the following categories:

- (a) planning and co-ordinating vocational training in the Territory;

- (b) devising and developing training programs and determining requirements for entering a training program;
- (c) promoting training and equity in access to training opportunities in the Territory, monitoring developments in training elsewhere and keeping training programs in the Territory under regular review;
- (d) accrediting training programs and qualifications obtained elsewhere and making reciprocal arrangements with its equivalents in other States and Territories;
- (e) generally supervising training, monitoring the facilities for training, assessing the competency of trainees and issuing certificates;
- (f) advising the Minister on training issues; and
- (g) other functions conferred by this Act or any other law of the Territory.

Subclause 8(2) obliges the Authority to consult with employee and employer organisations and whatever other persons or bodies it thinks fit when exercising its functions.

Clause 9: Powers

Subclause 9(1) requires the Authority to exercise its powers by way of resolution.

Subclause 9(2) provides that the Authority has power to do all things necessary or convenient for it to perform its functions as defined in clause 8. These powers are in addition to other specific powers conferred by the Act or any other law of the Territory.

Subclause 9(3) enables the Authority to enter into arrangements with an appropriate body or person to accredit industrial or commercial training or qualifications granted for such training.

Clause 10: Ministerial control

This clause imposes a duty on the Authority to comply with any written direction from the Minister specifying the policy the Authority is to follow in performing its functions or exercising its powers.

Clause 11: Delegation

Subclause 11(1) enables the Authority to delegate any or all of its powers (except the power to delegate) to:

- (a) the Chairperson or a member of the Authority;
- (b) the Chief Executive of the Authority;
- (c) the Grievances Committee;

(d) a Training Advisory Committee or any other Committee of the Authority; or

(e) a member of the staff of the Authority.

Subclause 11(2) provides that when a delegate exercises a delegated power, it is to be treated as if the Authority had exercised the power.

Subclause 11(3) ensures that the Authority is able to revoke a delegation at any time, that it can exercise a power, notwithstanding its delegation and that a delegated power will survive until expressly revoked, notwithstanding any change in the membership of the Authority.

Subclause 11(4) applies section 30 of the Interpretation Act 1967 to delegations under clause 11. Section 30 of the Interpretation Act 1967 provides that, where the exercise of a power or function depends upon a person forming a belief or opinion, a delegation of that power includes the power to form the relevant belief or opinion.

Subclauses 11(5) and 11(6) enable the Chairperson to sign certificates which are prima facie evidence that a power was properly delegated.

Clause 12: Annual Report

This clause casts a duty on the Authority to prepare an annual report for presentation to the Assembly. If the Minister has made any directions under clause 10, those must be set out in the report.

Division 2 - Constitution and meetings

Clause 13: Membership

This clause defines the membership of the Authority as:

- (a) the Director of the ACT Institute of Technical and Further Education;
- (b) 3 persons, appointed by the Minister after consulting the Trades and Labour Council of the ACT, to represent the interests of trainees;
- (c) 3 persons, appointed by the Minister after consulting employer organisations, to represent the interests of employers; and
- (d) 3 other members appointed by the Minister.

Clause 14: Terms of appointment

Subclause 14(1) provides that a member (apart from the Director of the Institute) is to be appointed in writing which specifies whether the member is full time or part time and the period (up to five years) for which the member will hold office.

Subclause 14(2) provides that appointed members will hold office on terms and conditions as specified in the Act or as determined in writing by the Minister.

Clause 15: Chairperson

This clause specifies that the Minister appoint one of the three members referred to in paragraph 13(d) as Chairperson of the Authority.

Clause 16: Age limit

This clause provides that appointed members must retire upon reaching 65 years of age.

Clause 17: Remuneration and allowances

This clause provides that the appointed members of the Authority are paid such remuneration and allowances as are prescribed in the regulations except where a determination of the Commonwealth Remuneration Tribunal provides for such remuneration or allowances.

Clause 18: Leave of absence

This provision empowers the Minister to grant leave of absence to the Chairperson and the Authority to grant leave of absence to other members.

Clause 19: Disclosure of interest

This clause deals with the disclosure of interests which may conflict with a member's duties on the Authority as follows.

Subclause 19(1) obliges members to disclose any direct or indirect pecuniary interest in a matter to be considered by the Authority.

Subclause 19(2) requires the Authority to record such disclosures in the minutes and prohibits the member from being present at any deliberations or decision of the Authority on that matter. The Authority may decide, however, that the member can take part in the consideration of the matter.

Subclause 19(3) prohibits the affected member from taking part in any discussion or determination of the Authority whether to exercise its discretion in subclause 19(2).

Clause 20: Resignation

This clause specifies that an appointed member of the Authority may resign by writing to the Minister.

Clause 21: Termination of appointment

This clause deals with dismissing appointed members of the Authority, which may be done only by showing cause.

Subclause 21(1) gives the Minister a discretion to dismiss an appointed member for misbehaviour or mental or physical incapacity.

Subclause 21(2) requires the Minister to dismiss the appointed member if he or she:

- (a) becomes bankrupt or takes advantage of any laws for the relief of bankrupt or insolvent debtors;
- (b) is absent without leave from 3 consecutive meetings of the Authority;
- (c) fails, without reasonable excuse, to comply with the disclosure of interests provisions in clause 19; or
- (d) is convicted anywhere of an offence punishable by imprisonment for one year or longer.

Clause 22: Acting appointments

This clause provides for the appointment of acting members as follows.

Subclause 22(1) provides that the Minister may appoint a person to act (for no more than 12 months) as Chairperson whenever there is a vacancy or the Chairperson is absent or cannot discharge his or her duties.

Subclause 22(2) makes equivalent provision for acting appointed members, other than the Director of the Institute.

Subclause 22(3) ensures that things done by an acting Chairperson or member will not be invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) of defects or irregularities in the appointment;
- (c) the appointment no longer had effect; or
- (d) the occasion for the person to act had not arisen or had ended.

Clause 23: Convening meetings

Subclause 23(1) obliges the Chairperson to convene meetings of the Authority as often as he or she thinks is necessary for the Authority to perform its functions efficiently.

Subclause 23(2) requires the Chairperson to give each member a minimum of 7 day's notice of a meeting. The notice is to be in writing and specify the date, time and place of the meeting and the agenda.

Clause 24: Procedure at meetings

This clause deals with procedures to be followed at a meeting of the Authority as follows.

Subclause 24(1) directs that the Chairperson is to preside at all meetings at which he or she is present.

Subclause 24(2) provides that, if the Chairperson is absent from a meeting, the members are to elect one of their number to preside.

Subclause 24(3) specifies that five members constitute a quorum including: the Chairperson; at least one member representing employee's interests; and at least one member representing employers' interests.

Subclauses 24(4) and 24(5) specify that the Authority will decide questions at a meeting by a majority of votes of the members present and for that purpose the member presiding has a deliberative vote only. There is no casting vote.

Subclause 24(6) ensures that where the votes on a question are equal, the Authority will reconsider the question at a time and place which the member presiding will fix.

Subclause 24(7) authorises the member presiding to determine the procedures at a meeting of the Authority, subject to the Act.

Subclause 24(8) obliges the Authority to keep minutes of its proceedings.

Division 3 - Administration

Clause 25: Chief Executive

This clause provides that the Head of Administration is to appoint a Chief Executive to manage the Authority. The Chief Executive is subject to, and must act in accordance with, the Authority's directions. The Chief Executive is to be a public servant.

Clause 26: Arrangements for staff

This provision enables the Authority to arrange with the Head of Administration to have the services of public servants made available to the Authority.

Clause 27: Inspectors

This clause empowers the Chief Executive to appoint inspectors for the purposes of the Act. Only members of the Authority or public servants whose services have been made available under clause 26 may be appointed as inspectors. Inspectors are to perform such duties as the Chief Executive directs.

Clause 28: Identity cards

This clause obliges the Chief Executive to issue photographic identity cards to inspectors.

Clause 29: Return of identity cards

This clause makes it an offence for an inspector to fail, without reasonable excuse, to return an identity card when he or she ceases to be an inspector. A breach of this provision attracts a maximum penalty of \$100.

PART III - COMMITTEES

Division 1 - Advisory and other committees

Clause 30: Establishment

This clause enables the Authority to establish and dissolve such Committees as it thinks it needs for the purposes of the Act. In particular, the Authority is able to establish Training Advisory Committees in relation to particular parts of industry and commerce.

Clause 31: Functions of the Training Advisory Committees

This clause defines the function of Training Advisory Committees as providing information and advice to the Authority about training in that particular part of industry and commerce for which the Committee was established. A Committee is able to give advice of its own volition as well as on the Authority's request.

Clause 32: Performance of functions

Subclause 32(1) provides that, subject to subclause 32(2), a Committee may determine its own proceedings.

Subclause 32(2) gives the Authority discretion to determine:

- (a) how a Committee is to perform its functions; and

(b) the procedures to be followed at its meetings.

Clause 33: Membership

Subclauses 33(1) and 33(2) provide that Committees comprise those people the Authority appoints and may consist wholly of Authority members or partly of members and partly of other people.

Subclause 33(3) provides that a Committee member may resign by writing to the Chief Executive.

Subclause 33(4) provides that the Authority may terminate a Committee member's appointment at any time.

Clause 34: Expenses of members

This clause provides that a Committee member, except those who are also Authority members, are entitled to be reimbursed only for reasonable expenses incurred in the performance of his or her duties or functions. Committee members are not be entitled to other remuneration.

Division 2 - The Grievances Committee

Clause 35: Establishment

This clause establishes the Grievances Committee.

Clause 36: Membership

Subclause 36(1) specifies that the Grievances Committee comprise:

- (a) the Chairperson of the Authority;
- (b) a member who represents employees' interests; and
- (c) a member who represents employers' interests.

Subclause 36(2) provides that a member of the Grievances Committee may resign by writing to the Chairperson.

Subclause 36(3) empowers the Authority to terminate an appointment to the Grievances Committee at any time.

Subclause 36(4) ensures that only members of the Authority may be members of the Grievances Committee.

Clause 37: Chairperson

This clause specifies that the Chairperson of the Authority is to be the Chairperson of the Grievances Committee.

Clause 38: Meetings

This clause deals with how meetings of the Grievances Committee are to proceed.

Subclause 38(1) requires the Committee to hold meetings whenever necessary to enable it to perform its functions.

Subclause 38(2) enables the Chairperson to convene meetings at any time.

Subclause 38(3) requires all three members of the Committee to be present at a meeting.

Subclause 38(4) specifies that the Chairperson presides at a Committee meeting. Since the Chairperson (or acting Chairperson) must always be present, a provision for a substitute presiding member is unnecessary.

Subclauses 38(5) and (6) ensure that questions arising at a meeting are to be decided by a unanimous vote of the three members. If any member votes against a question or refrains from voting on it, the question is to be treated as undecided and it will have to be reconsidered at another time and place which the Chairperson fixes.

Subclause 38(7) requires the Committee to keep minutes of its proceedings.

Clause 39: Protection of members

Clause 39 ensures that members of the Committee are protected against any civil or criminal action for anything they may do in good faith (except things done negligently) in performing their functions as Committee members. This protection reflects the quasi-judicial nature of the Committee's enquiry, dispute settling and disciplinary functions. Clause 80 provides similar protection to witnesses and their representatives who appear before the Committee.

Clause 40: Members ceasing to be available

This clause ensures that, where an inquiry is partially heard and a Committee member is for some reason no longer available, a reconstituted Committee, comprising the remaining members and a newly appointed member, can continue and finish the inquiry. The reconstituted Committee may take into account the written records of the previous Committee.

PART IV - TRAINING IN PRESCRIBED PROGRAMS

Division 1 - Approved training programs

Clause 41: Determination of approved training programs

Subclause 41(1) gives the Authority discretion to determine approved training programs for prescribed vocations.

Subclause 41(2) requires the Authority to exercise its discretion under subclause 41(1) in writing which should specify:

- (a) what the training program involves and how long it lasts; and
- (b) what prerequisites potential trainees must satisfy to undertake the program.

Subclause 41(3) obliges the Chief Executive to prepare statements setting out the particulars of each training program as determined and make these available to members of the public who wish to obtain that information.

Subclauses 41(4) and (5) provide for the situation where the Authority has refused to approve a training program which a person or body plans to conduct for profit. The authority is required to give written notice of its refusal.

Clause 42: Approval to undertake

This clause requires a person who wishes to undertake a training program under a contract of training to seek the Authority's approval before starting. This enables the Authority to exercise its supervisory functions by approving:

- (a) the prospective trainee's eligibility and suitability for the program;
- (b) the terms of the contract (if it is not a standard approved contract);
- (c) the suitability of the prospective employer, including facilities available and the qualifications and suitability of the proposed supervisor (where relevant).

Subclause 42(1) provides that a person is not treated as having started a training program unless the Authority has given its approval.

Subclause 42(2) requires the Authority either to give its approval (subject to conditions if thought necessary) or to refuse it, to an application for approval.

Subclause 42(3) obliges the Authority, when making a decision under subclause 42(2), to take into account any decisions made under clauses 53 to 59. Those provisions relate to conditions affecting training.

Subclause 43(4) ensures that the Authority will not grant its approval unless it believes, on reasonable grounds, that the prospective employer under the contract is suitably qualified and otherwise fit and proper to undertake the role of training a trainee.

Subclause 42(5) obliges the Authority to give the applicant written notice of its decision within 14 days of making it.

Clause 43: Credit for previous training

Clause 43 deals with credits for certain relevant training which an applicant may have undertaken before starting an approved program of training under a contract.

Subclause 43(1) gives the Authority a discretion to determine that certain types of training already undertaken may be counted as part of the period of training under the approved program. The relevant training is that which the applicant has undertaken in accordance with:

- (a) a training program approved under clause 41;
- (b) a training program which the Authority has accredited;
- (c) a course of pre-vocational training; or
- (d) any other course of training.

It does not matter that the applicant may not have completed the course of training.

Subclause 43(2) ensures that a credit determined under subclause 43(1) is treated as if it were undertaken in accordance with the approved program of training in question.

Subclauses 43(3) and 43(4) require the Authority to give the applicant a written notice of its decision under subclause 43(1): within 14 days of making the decision if the Authority has refused to grant a credit.

Clause 44: Variation of standard duration

Subclause 44(1) empowers the Authority to vary in individual cases the fixed standard period of a program of training.

Subclause 44(2) requires the Authority to take into account any credits it may have granted under clause 43 to the applicant in question whenever it exercises its discretion in subclause 44(1).

Subclause 44(3) ensures that a person who completes the period of training determined under subclause 44(1) is treated as if he or she has completed the approved training program.

Subclauses 44(4) and 44(5) oblige the Authority to give an applicant written notice of its determination under subclause 44(1): within 14 days of making the determination if it is a refusal.

Clause 45: Applications under Division 1

Clause 45 specifies the procedure for making applications under clauses 43, 43 and 44.

Division 2 - Contracts of training

Clause 46: Training to be done under contract

Subclause 46(1) ensures that all training undertaken for the specific purpose of an employee becoming qualified in a prescribed vocation (the specific purpose) is undertaken under a contract of training, and hence subject to the Act. An employer who trains an employee for the specific purpose, except under a contract of training, commits an offence. Training an employee for some other purpose (eg: to augment existing skills and knowledge) or in a vocation which is not prescribed, does not fall within the prohibition of subclause 46(1). A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Subclause 46(2) provides that where an employer trains an unqualified employee in a prescribed vocation, the employer is assumed to be training the employee for the specific purpose unless the contrary be established.

Subclause 46(3) ensures that subclause 46(1) does not apply to a probationer or apprentice to whom the continued provisions of the Apprenticeship Act 1936 apply by virtue of clause 95.

Clause 47: Determination of terms

Subclause 47(1) gives the Authority a general power to determine the terms of contracts of training, subject to the standard provisions inserted by clause 48.

Subclause 47(2) provides for a determination of the Authority to impose certain contractual obligations on employers if they are relevant in the circumstances. These obligations are:

- (a) not to use premises, equipment or training methods which the Authority has not approved under clause 53;
- (b) not to employ or engage a supervisor whom the Authority has not approved under clause 54; and

- (c) not to allow the ratio of trainees to approved supervisors to exceed the relevant ratio approved under clause 59.

Clause 48: Standard requirements

This provision implies certain fundamental terms into all contracts of training. Parties to a contract may not avoid them by making contrary provision.

Subclause 48(1) provides that, under a contract of training, a trainee is employed by the person providing the training and that the conditions of employment comply with those fixed by a relevant industrial award. Thus a contract of training is also a contract of employment.

Subclause 48(2) imposes the following contractual obligations on the employer:

- (a) to train the trainee in accordance with the relevant approved training program;
- (b) not to hinder or obstruct the trainee from complying with the requirements of the relevant approved training program; and
- (c) not to require a trainee who is under 18 years old to work overtime without that trainee's consent.

Subclause 48(3) imposes on a trainee a contractual obligation to comply with the requirements of the relevant approved training program.

The obligations under subclauses 48(2) and 48(3) are in addition to any other obligations a contract may impose.

Subclause 48(4) gives each party a contractual right to terminate the contract unilaterally within the following periods:

- (a) if the trainee is an apprentice, within 3 months of the commencement of the contract or whatever other period may be prescribed in the regulations; or
- (b) if the trainee is not an apprentice, within 1 month of the commencement of the contract or whatever other period may be prescribed.

Subclause 48(5) imposes a mutual contractual obligation to submit any dispute about the contract to the Grievances Committee and to be bound by any finding of fact the Committee may make in relation to the subject matter of the dispute.

Subclause 48(6) ensures that contracts of training are construed in accordance with the Act and any decision of the Grievances Committee about the contract.

Clause 49: Approved variations

Subclause 49(1) ensures that the Authority approves any variation which the parties may wish to make to an existing contract of training. An unapproved variation to a contract of training has no effect.

Subclause 49(2) limits the Authority's discretion to refuse approval to circumstances where it has reasonable grounds for believing that, if it approved the variation, the training provided under the varied contract would not accord with the relevant training program.

Subclause 49(3) requires the Authority to give the parties a written notice within 14 days of making a decision under subclause 49(1).

Clause 50: Notice of early termination

This clause makes it an offence for a party exercising the right of unilateral termination under subclause 48(4) to fail to notify the Authority in writing within 7 days of that termination. This ensures that the Authority has knowledge of the current status of contracts under its supervision. A breach attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Clause 51: Termination - trainee qualifying early

Clause 51 provides the following mechanism under which an advanced trainee can finish the program of training before the fixed duration has expired and receive his or her certificate.

Subclause 51(1) enables the Authority to assess the knowledge and skills of the trainee and satisfy itself that:

- (a) the trainee is competent to work in the relevant prescribed vocation; and
- (b) does not need to complete the relevant approved training program.

If it is so satisfied the Authority must, on the application of all parties to the contract of training, issue a certificate and terminate the contract.

Subclause 51(2) requires the Authority to give written notice to each party to the contract of training of its termination under subclause 51(1).

Subclause 51(3) fixes the date of effect of the termination.

Clause 52: Applications under section 49 or 51

Clause 52 specifies the procedure for making applications under clauses 49 and 51.

Division 3 - Conditions affecting training

Clause 53: Approval of premises etc.

This provision enables the Authority to approve the suitability of an employer's premises, equipment and methods of training which that employer uses, or proposes to use, to train a person under a contract of training.

Clause 54: Approval of supervisors

This clause similarly enables the Authority to approve the suitability of a person who supervises or is to supervise a person's training under a contract of training. A supervisor is required to have appropriate qualifications, knowledge and skills and otherwise be a fit and proper person to undertake the role.

Clause 55: Approvals under section 53 or 54

Subclause 55(1) states that the Authority may exercise its discretion under Clauses 53 and 54 either of its own accord or upon application by an employer.

Subclause 55(2) states that approvals under clauses 53 and 54 must be in writing and may be subject to conditions.

Subclauses 55(3), 55(4) and 55(5) ensure that employers receive written notice of any relevant decisions under clauses 53 and 54 and that such decisions do not take effect before the Authority gives notice. Where the Authority refuses to grant approval under clauses 53 and 54, it is required to give the employer written notice within 14 days of making that decision.

Clause 56: Conditional approvals - variation

Subclause 56(1) defines "approval" to mean an approval under Clause 53 or 54.

Subclause 56(2) empowers the Authority to vary or revoke a condition or to make an approval subject to a particular condition sought by the applicant employer. The Authority can exercise this power only upon the application of an employer who is party to a contract of training and only if it believes on reasonable grounds that it will not adversely affect the training which the relevant training program contemplates.

Subclause 56(3) gives the Authority a similar power which it may exercise of its own accord, if it believes on reasonable grounds that it is necessary to ensure that the training in question accords with the relevant training program.

Subclauses 56(4) and (5) ensure that the Authority cannot exercise its powers under subclause 56(3) without giving the affected employer notice and an opportunity to make written

representations to the Authority in answer to its proposed action. The Authority is obliged to take into account any matters the employer raises in those representations.

Subclause 56(6) ensures that an affected employer receives written notice of the terms of any decision the Authority makes under subclause 56(2) or 56(3).

Subclause 56(7) ensures that no decision under subclause 56(2) or 56(3) can take effect before the required notice is given.

Clause 57: Applications under clause 55 or 56

Clause 57 specifies the procedures for making an application under clause 55 or 56.

Clause 58: Revocation of approval

Subclause 58(1) defines "approval" to mean an approval under clause 53 or 54.

Subclause 58(2) empowers the Authority to revoke an approval if it believes on reasonable grounds that:

- (a) the employer has failed to comply with a condition of his or her approval;
- (b) the premises, equipment or methods of training are no longer suitable for training a person; or
- (c) an approved supervisor does not have the appropriate qualifications, knowledge or skills or is otherwise not a fit and proper person to supervise a person's training.

Subclauses 58(3) and 58(4) ensure that the Authority cannot exercise its power to revoke an approval without giving the affected employer notice to the Authority in answer to its proposed action. The Authority is obliged to take into account any matters the employer raises in those representations.

Subclauses 58(5) and (6) ensure that the affected employer receives written notice of any decision the Authority makes under subclause 58(2) and that such a decision cannot take effect before the required notice is given.

Clause 59 - Ratio - trainees: supervisors

Subclauses 59(1) and 59(2) enable the Authority to make a written determination which specifies a minimum ratio of approved supervisors to trainees in a prescribed vocation. A determination may relate to a specific employer or to a specific class of employers.

Subclauses 59(3) and 59(4) require the Authority to publish a determination relating to a specific employer by giving that employer written notice and one relating to a specific class

employers by a notice in the Gazette. In neither case can the determination take effect earlier than the date of the notice.

The operation of clause 59 is limited by clause 5 to circumstances where there is no Federal award which already specifies the relevant ratio for the prescribed vocation in question.

Clause 60: Travelling expenses etc.

This provision enables the Commonwealth to pay approved travelling expenses and a prescribed allowance to trainees who are required to travel outside the Territory to undertake a course of training as part of the approved training program. The expenses and/or allowance may be paid as an advance.

Division 4 - Employer's obligations

Clause 61: Notice of contract

This clause requires an employer who enters into a contract of training to give the Chief Executive a copy of the contract and any other prescribed documents within 14 days after the date of the contract. It is an offence to fail to do so without reasonable excuse. This provision ensures that the Authority has notice of all contracts of training on foot, including those which might be executed without its prior knowledge. A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Clause 62: Hindering attendance at college etc.

Clause 62 makes it an offence for an employer unreasonably to hinder or obstruct a trainee from complying with the requirements of an approved training program. A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Clause 63: Records

Subclause 63(1) requires an employer who is party to a contract of training to keep a copy of the contract and any other documents specified in the regulations while the contract remains on foot.

Subclause 63(2) requires a former employer under a terminated contract of training to return all documents he or she has kept under subclause 63(1) to the Chief Executive within 28 days of the contract ending.

Subclause 63(3) makes it an offence not to comply with subclause 63(1) or 63(2) without reasonable excuse. A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Division 5 - Grievances and misconduct

Clause 64: Request for action by Grievances Committee

Subclause 64(1) obliges the Committee to hold an inquiry if a party to a contract of training is aggrieved by the conduct of another party and applies to the Committee asking it to exercise one of its powers under clause 67.

Subclause 64(2) specifies the form of the application and the particulars contained in it.

Clause 65: Suspension pending inquiry

Subclause 65(1) enables the Chairperson of the Committee to suspend a trainee's contract in the following circumstances:

- (a) the employer has applied for the Committee to exercise one of its powers on the ground of a trainee's misconduct;
- (b) the Chairperson believes on reasonable grounds that the trainee has been guilty of misconduct; and
- (c) the employer has made a written request to the Chairperson for the suspension.

The suspension lasts until the Committee has finished its inquiry into the employer's application.

Subclause 65(2) ensures that a suspension cannot take effect before a written notice is sent to all parties to the contract.

Subclause 65(3) ensures that the Committee's inquiry starts within 7 days of the suspension and finishes as soon as practicable.

Subclause 65(4) defines "misconduct" to include:

- (a) a wilful refusal to obey a lawful command of the employer; and
- (b) an unauthorised absence from employment without reasonable excuse.

Clause 66: Inquiry initiated by the Grievances Committee

This provision enables the Committee to begin an inquiry of its own accord if it believes on reasonable grounds that:

- (a) a party to the contract has contravened an obligation under the contract or the Act; or
- (b) the employer is not a fit and proper person to train the trainee.

Clause 67: Powers of Grievances Committee

Subclause 67(1) provides that, after the Committee has completed an inquiry in relation to a matter concerning a contract of training, it may exercise the following powers:

- (a) attempt to resolve the dispute between the parties by counselling or conciliation;
- (b) make a finding of fact in relation to any matter concerning the contract;
- (c) reprimand a party to a contract;
- (d) order a party to comply with his or her contractual obligations;
- (e) order a party not to enforce a specified contractual right against another party;
- (f) set aside a suspension under clause 65;
- (g) suspend the contract for up to 4 weeks;
- (h) terminate the contract; or
- (i) give directions to a party to the contract which are incidental to its powers under this subclause.

Subclause 67(2) ensures that, where the Committee gives a direction under paragraph 67(1)(d),(e) or (i), the person affected has written notice of the direction and that the direction cannot take effect before that written notice.

Subclause 67(3) requires the Chairperson to give each party to a contract of training written notice whenever the Committee exercises its power to set aside a suspension under clause 65, or to suspend or to terminate a contract of training.

Subclauses 67(4) and (5) ensure that none of the decisions referred to in subclause 67(3) can take effect before the required notice is given.

Subclause 67(6) ensures that, where the Committee suspends a contract, the suspension ends on the date specified in the notice, which may be no later than 4 weeks after it took effect.

Clause 68: Effect of direction not to enforce contractual rights

Clause 68 declares that, where the Committee has directed a party to a contract of training not to enforce a contractual right, no right of action can lie to enforce the right while the direction remains in force.

Clause 69: Compliance with directions

This clause makes it an offence to contravene a direction under paragraph 67(1)(d) or (e), without reasonable excuse. A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Clause 70: Reconsideration

Subclause 70(1) gives a party to a contract of training or the Authority a right to request the Committee to reconsider a decision it has made under clause 67.

Subclause 70(2) specifies that the request be in writing and set out the reasons for the request and be lodged with the Chairperson within 14 days of receiving notice of the decision. The Chairperson has a discretion to extend the deadline.

Subclause 70(3) requires the Committee to reconsider its decision as soon as practicable after being asked to do so and empowers the Committee to affirm, revoke or vary the decision as it thinks fit.

Subclause 70(4) ensures that the person or Authority receives written notice of a reconsideration.

Division 6 - Inquiries

Clause 71: Interpretation

Clause 71 defines "inquiry" to mean an inquiry under clause 64 or 66 and confirms that each party to a contract of training is a party to an inquiry concerning that contract.

Clause 72: Notice of inquiry

This provision ensures that the no inquiry may begin without each party being given at least 7 days notice of the proposed inquiry. The notice must specify the subject matter of the inquiry, the time and place where it is to begin and the date by which written submissions may be made to the Committee.

Clause 73: Procedure

Subclause 73(1) specifies that an inquiry is to be as non-technical as possible, while still allowing the Committee to give proper consideration to the matter at hand.

Subclause 73(2) confirms that the Committee will not be bound by the rules of evidence.

Subclause 73(3) enables the Chairperson of the Committee to determine procedure in the absence of any specific provision in the Act.

Clause 74: Consultation

Clause 74 authorises the Committee to consult the Authority, a Training Advisory Committee or any other body or person the Committee thinks necessary to inform itself of any matter pertinent to the inquiry.

Clause 75: Inquiry to be private

Subclause 75(1) requires inquiries to be held in private unless the parties agree to the contrary.

Subclause 75(2) gives the Committee power to direct who may be present at a hearing and to limit or otherwise control the publication or disclosure of evidence given at the inquiry.

Clause 76: Representation

This clause allows a party or a person summoned to appear before the Committee to be represented by another person, subject to the Committee's approval.

Clause 77: Powers of Committee

Subclause 77(1) gives the Committee the following powers:

- (a) to take evidence on oath or affirmation;
- (b) to proceed in the absence of a party who has received notice of the inquiry; and
- (c) to adjourn the inquiry from time to time.

Subclause 77(2) gives the Chairperson of the Committee the following powers relating to an inquiry:

- (a) to summon a person to appear before the Committee and to produce relevant documents;
- (b) to require a person to give evidence on oath or affirmation; and
- (c) to administer the oath or affirmation.

Subclause 77(3) requires a summons to be in writing, to be signed by the Chairperson and to be served on the person to be summoned.

Clause 78: Inspection of documents

Clause 78 permits the Committee to examine documents produced at an inquiry, to copy relevant extracts and to retain them for as long as is necessary for the purposes of the inquiry.

Clause 79: Submissions etc.

This provision requires the Committee to ensure that each party to an inquiry has a reasonable opportunity to present his or her case, to inspect relevant documents and to make submissions to the Committee.

Clause 80: Protection of witnesses

Subclause 80(1) gives a person who represents a party at an inquiry the same protection and immunity as a barrister and solicitor in the Supreme Court.

Subclause 80(2) gives a person summoned to appear before the Committee the same protection as a witness in the Supreme Court.

Clause 81: Witnesses - fees and expenses

Subclause 81(1) provides that a person summoned to appear before the Committee is entitled to fees and travelling expenses determined by the Chairperson in accordance with the scale in Schedule 1 to the Determination in force from time to time under subsection 59(1) of the Administrative Appeals Tribunal Act 1989.

Subclause 81(2) provides that, where a party has summoned the person to attend the hearing, that party pays the fees and expenses referred to in subclause 81(1). In any other case, the Territory pays the fees and expenses.

Clause 82: Offences

This clause deals with offences at inquiries as follows.

Subclause 82(1) makes it an offence for a person summoned to appear before the Committee or to produce specified documents to fail to comply without reasonable excuse. A breach of this provision attracts a maximum penalty of \$1000.

Subclause 81(2) makes it an offence for a witness at an inquiry to refuse, without reasonable excuse, to take the oath or affirmation or to fail to answer a question relevant to the inquiry which the Chairperson requires the witness to answer, except as provided by section 57 of the Evidence Act 1971. A breach of this provision attracts a maximum penalty of \$1000.

Subclause 82(3) makes any statement or disclosure made before the Committee inadmissible in any court proceedings, apart from proceedings for giving false evidence.

Division 7 - Review of decisions

Clause 83: Reviewable decisions

Subclause 83(1) declares the following decisions of the Authority to be reviewable decisions:

- (a) a refusal to make a determination under subclause 41(1) in respect of a private training program;
- (b) a decision under paragraph 42(2)(a) to grant an approval subject to conditions;
- (c) a refusal under paragraph 42(2)(b) to grant an approval;
- (d) a determination under subclause 43(1);
- (e) a refusal to make a determination under subclause 43(1);
- (f) a determination under subclause 44(1);
- (g) a refusal to make a determination under subclause 44(1);
- (h) a refusal to grant approval under subclause 49(2);
- (j) a decision under clause 53 -
 - (i) fixing the date of effect of an approval;
 - (ii) imposing conditions on an approval; or
 - (iii) refusing to grant an approval;
- (k) a decision under clause 54 -
 - (i) fixing the date of effect of an approval;
 - (ii) imposing conditions on an approval; or
 - (iii) refusing to grant an approval;
- (m) a decision refusing -
 - (i) to vary a condition under paragraph 56(2)(a);
 - (ii) to revoke a condition under paragraph 56(2)(b);
or
 - (iii) to impose a condition under paragraph 56(2)(c);
- (n) a decision under paragraph 56(3)(a) varying a condition;

- (o) a decision under paragraph 56(3)(b) revoking a condition;
- (p) a decision under paragraph 56(3)(c) imposing a condition on an approval;
- (q) the revocation of an approval under subclause 58(2);
- (r) a determination under subclause 59(1);
- (s) a refusal to issue a certificate of recognition under subclause 90(1).

Subclause 83(2) declares the following decisions of the Grievances Committee to be reviewable:

- (a) a decision under paragraph 67(1)(b),(c),(d),(e),(f),(g) or (h); or
- (b) a decision under paragraph 67(1)(i) or subclause 70(3) (other than a decision relating to the exercise of a power under paragraph 67(1)(a));

A decision under paragraph 67(1)(a) is not reviewable under Division 7 because its nature is more judicial than administrative. Consequently, the Administrative Appeals Tribunal would not be an appropriate forum. It always remains open to an aggrieved party to seek relief from a court.

Clause 84: Notice of review rights

Subclause 84(1) requires any written notice which the Chief Executive or Chairperson of the Committee has to give in respect of a reviewable decision to include a statement to the effect that:

- (a) a party to the decision may apply to the Administrative Appeals Tribunal to have the decision reviewed; and
- (b) a person whose interests are affected by the decision may ask for a statement pursuant to section 26 of the Administrative Appeals Tribunal Act 1989 unless subsection 26(11) of that Act applies.

Subclause 84(2) ensures that a reviewable decision is not made invalid merely because subclause 84(1) was not complied with.

Clause 85: Review of decisions

This clause confers jurisdiction on the Administrative Appeals Tribunal to review reviewable decisions.

Division 8 - Powers of inspectors

Clause 86: Inspections etc.

Subclause 86(1) authorises inspectors to enter non-residential premises at any reasonable time for the limited purposes of ensuring that parties to a contract of training are complying with their contractual obligations and/or that they are complying with the provisions of the Act. An inspector may enter premises only if he or she believes on reasonable grounds that they are used for training a person in a prescribed vocation. An inspector has no right to enter residential premises.

Subclause 86(2) makes an inspector's right to remain on relevant premises dependant upon showing his or her identity card if the occupier asks to see it.

Subclause 86(3) specifies that an inspector who has entered premises has the following powers:

- (a) to inspect the premises;
- (b) to inspect and test any equipment on the premises which the inspector believes on reasonable grounds to be used in training a person in a prescribed vocation;
- (c) to inspect any work in progress which the inspector believes on reasonable grounds relates to the training of a person in a prescribed vocation;
- (d) to require the occupier to answer questions about training conducted on the premises in a prescribed vocation; or
- (e) to require the occupier to produce any document containing information relating to training conducted on the premises in a prescribed vocation.

Clause 87: Obstructing inspectors

Clause 87 makes it an offence to obstruct or hinder an inspector exercising his or her powers or to refuse to answer questions or produce documents which the inspector requires unless the person has reasonable excuse. A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Clause 88: False information

Clause 88 makes it an offence knowingly to give an inspector false or misleading information (whether oral or in a document) in reply to a request under paragraphs 86(3)(d) or (e). A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

PART V - MISCELLANEOUS

Clause 89: Unqualified young persons not to be employed in trades

This clause prohibits an employer from employing a person under 21 years old in a trade unless that person is either:

- (a) an apprentice;
- (b) a transitional apprentice or probationer; or
- (c) qualified in that trade.

A person who is party to a contract of employment and performs work which is ordinarily performed by a person qualified in a trade will be taken to be working in that trade unless the contrary is established. A breach of this provision attracts a maximum penalty of \$1000 for a natural person or \$5000 for a body corporate.

Clause 90: Certificates of recognition

Clause 90 provides that the Authority may issue a certificate of recognition to a person who does not have any formal qualifications yet has a lot of experience, skills and knowledge in a prescribed vocation. The certificate of recognition will, among other things, permit the holder to obtain approval under clause 54 as an approved supervisor of trainees.

Subclause 90(1) enables the Authority to issue a certificate of recognition to an applicant in respect of a prescribed vocation.

Subclause 90(2) ensures that a trainee cannot short-circuit an approved training program by applying for a certificate of recognition.

Subclause 90(3) specifies that the criterion for issuing a certificate of recognition is the Authority's satisfying itself that the applicant is competent to work in the prescribed vocation in question.

Subclause 90(4) provides that the Authority, in order to decide whether to issue a certificate of recognition:

- (a) must take into account the applicant's work experience or any training done; and
- (b) may arrange to have the applicant's knowledge and skills tested by an examination or other means.

Subclause 90(5) specifies application procedures for a certificate of recognition.

Clause 91: Training schemes

This provision enables the Authority to declare approved schemes of training in occupations which are not prescribed vocations. These schemes fall outside the full regulatory measures of the Act. The Authority can issue certificates to those who complete approved schemes of training.

Clause 92: Pre-vocational courses

Clause 92 enables the Authority to declare approved courses of pre-vocational training, designed to prepare a person for training in a prescribed vocation.

Clause 93: Regulations

Clause 93 confers a regulation making power on the Executive.

PART VI - TRANSITIONAL

Clause 94: Interpretation

Clause 94 is an interpretation clause for Part VI dealing with transitional matters.

Clause 95: Application of certain repealed provisions

Subclause 95(1) applies certain relevant provisions of the Apprenticeship Act 1936 and the Apprenticeship Regulations to those who were apprentices ("old scheme apprentices") or probationary apprentices ("old scheme probationers") immediately before the Act came into operation, notwithstanding the repeal under clause 3. The Authority administers the training of old scheme apprentices and probationers under the applied provisions of the repealed Act. Subclause 95(1) also converts certain references in the applied provisions of the repealed Act to account for the change in the administering body.

Subclause 95(2) specifies the relevant provisions of the repealed Act which apply by virtue of subclause 95(1). These provisions all relate to the various powers and procedures necessary to administer the training of old scheme apprentices and probationers.

Clause 96: Savings

Subclause 96(1) preserves indentures of apprenticeship which were in force immediately before the day the Act came into operation.

Subclause 96(2) deems certain instruments, acts or decisions of the former Apprenticeship Board, Chairman or Registrar of Apprenticeship to be the instruments, acts or decisions of the Authority, Chairperson or Chief Executive respectively. This provision applies only to instruments, acts or decisions which had effect in relation to an old scheme apprentice or probationer immediately before the day the Act commenced.

Subclause 96(3) deems references in continued indentures or instruments to the Apprenticeship Board, Chairman or Registrar of Apprenticeship to be references to the Authority, Chairperson or Chief Executive respectively.

Clause 97: Inspections

This clause applies the inspection procedures of Part IV, Division 8 to transitional apprentices and transitional probationers.

The Schedule lists the Acts which clause 3 repeals.