



ANNO TRICESIMO QUARTO

# ELIZABETHAE II REGINAE

A.D. 1985

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No. 10 of 1985

**An Act to amend the Industrial and Commercial Training Act, 1981.**

*[Assented to 7 March 1985]*

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

Short title.

1. (1) This Act may be cited as the "Industrial and Commercial Training Act Amendment Act, 1985".

(2) The Industrial and Commercial Training Act, 1981, is in this Act referred to as "the principal Act".

Commencement.

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

Amendment of  
s. 3—  
Arrangement of  
Act.

3. Section 3 of the principal Act is amended by striking out the item:  
DIVISION IV—THE DISCIPLINARY COMMITTEE OF THE COMMISSION  
and substituting the item:

DIVISION IV—THE DISPUTES AND DISCIPLINARY COMMITTEE.

Amendment of  
s. 5—  
Interpretation.

4. Section 5 of the principal Act is amended—

(a) by striking out the definition of "the disciplinary committee" and substituting the following definition:

"the disputes and disciplinary committee" or "the committee"  
means the Disputes and Disciplinary Committee established under Division IV of Part II;

and

(b) by striking out from the definition of "pre-vocational training" the passage "a trade or other declared vocation" and substituting the passage "an occupation".

Amendment of  
s. 13—  
Delegation.

5. Section 13 of the principal Act is amended by striking out the word "or" between paragraphs (a) and (b) of subsection (1) and inserting after paragraph (b) the following word and paragraph:

or

(c) to any other person.

6. The heading to Division IV of Part II of the principal Act is repealed and the following heading is substituted:

Repeal of heading to Division IV of Part II and substitution of new heading.

THE DISPUTES AND DISCIPLINARY COMMITTEE.

7. Section 18 of the principal Act is repealed and the following section is substituted:

Repeal of s. 18 and substitution of new section.

18. (1) There shall be a committee entitled the "Disputes and Disciplinary Committee".

The Disputes and Disciplinary Committee.

(2) Where a matter is referred to the committee under this Act, the committee shall be constituted 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 committee for the purposes of the hearing and determination of that matter.

(3) The 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 committee.

(4) If the Commission, acting at the direction of the Minister, requests the committee to review its decision or order upon any matter, the 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.

8. Section 21 of the principal Act is amended—

(a) by striking out subsections (4) and (5);

(b) by inserting in subsection (12) after the passage "from one employer to another" the passage "(whether by virtue of subsection (14) or otherwise)";

and

(c) by inserting after subsection (12) the following subsections:

Amendment of s. 21—  
Training in declared vocation to be offered only under prescribed conditions.

(13) Subject to this Act, a contract of training may not be terminated or suspended without the approval of the Commission.

(14) A change in the ownership of a business does not result in the termination of a contract of training entered

into by the former owner but, where a change of ownership occurs, the rights, obligations and liabilities of the former owner under the contract shall, by force of this subsection, be transferred to the new owner.

(15) Where the prescribed form of a contract of training is unsuited to the expression of a proposed agreement, the Commission may authorize such variation of the form as it considers necessary.

Insertion of new section 21a.

9. The following section is inserted after section 21 of the principal Act:

Requirements in relation to employment under contract of training.

21a. (1) Where an apprentice or other trainee is employed under a contract of training, the following requirements must be satisfied—

- (a) the place of employment must be approved by the Commission;
- (b) the equipment and methods to be used in training must be approved by the Commission;
- (c) the persons who are to supervise his work must be approved by the Commission;
- (d) the ratio between the number of persons employed under contracts of training and the number of persons who are to supervise their work must not exceed the appropriate ratio fixed under subsection (5).

(2) An approval under subsection (1) may be given subject to such conditions as the Commission thinks fit.

(3) The Commission may, by notice served on an employer, withdraw its approval given under subsection (1) if—

- (a) in the Commission's opinion—
  - (i) the place in which the apprentice or other trainee is employed;
  - (ii) the equipment and methods used in training;
 or
  - (iii) the persons who supervise his work, are no longer suitable;

or

- (b) there has been a breach of or a failure to comply with a condition to which the Commission's approval was subject.

(4) The Commission shall not give an approval under subsection (1) at variance with an order of the disputes and disciplinary committee.

(5) The Commission may fix a ratio for the purposes of subsection (1) (d)—

- (a) in relation to a particular employer—by notice served on the employer;

or

(b) in relation to a class of employers—by notice published in the *Gazette*,

and a ratio so fixed may be varied by subsequent notice under this subsection.

(6) An employer who employs an apprentice or other trainee under a contract of training shall, if a requirement of this section is not complied with, be guilty of an offence.

Penalty: Five hundred dollars.

**10.** Section 23 of the principal Act is amended by inserting after subsection (1) the following subsections:

Amendment of s. 23—  
Term of contract of training.

(1a) The Commission may, of its own motion or on the application of the parties to a contract of training or proposed contract of training, determine—

- (a) that the whole or a part of a period of training that occurred before the date of the contract be treated as a period of training served under the contract;
- (b) that the whole or a part of a period of training that occurred under a previous contract of training be treated as a period of training served under the contract of training;

or

(c) that a period for which the apprentice or other trainee was absent from his employment under the contract of training be excluded from consideration in computing the length of his service under the contract of training.

(1b) Subject to subsection (1c), the term of a contract of training shall be computed and the contract shall be construed and shall apply in accordance with a determination made by the Commission under subsection (1a).

(1c) Where a conflict occurs between a determination of the Commission under this section and a determination of the disputes and disciplinary committee, the determination of the committee shall prevail.

**11.** Section 25 of the principal Act is amended by inserting after subsection (2) the following subsection:

Amendment of s. 25—  
Requirement to attend approved courses of training.

(3) For the purpose of determining the wages payable to an apprentice or other trainee, time spent by him in attending an approved course of instruction that he is undertaking for the first time shall be deemed to be time spent in the service of his employer.

**12.** Section 26 of the principal Act is repealed and the following section is substituted:

Repeal of s. 26 and substitution of new section.

26. (1) Where—

(a) a dispute arises between parties to a contract of training;

or

Disputes and discipline.

(b) a party to a contract of training is aggrieved by the conduct of another party,

a party to the contract may refer the matter to the disputes and disciplinary committee.

(2) 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 disputes and disciplinary committee.

(3) The committee shall inquire into a matter referred to it under this section, and may, if it thinks fit, by order, exercise one or more of the following powers:

- (a) it may reprimand a party in default;
- (b) it may suspend a person from his employment under a contract of training for a period not exceeding four weeks commencing on the date of, or on a date occurring before or after, the date of the order;
- (c) it may confirm or revoke a suspension imposed under subsection (7) 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) it may extend the term of a contract of training;
- (e) it may cancel a contract of training as at the date of, or at a date occurring before or after, the date of the order;
- (f) it may order a party to the contract to pay such wages or take such other action that, in the opinion of the committee, he is required to take under the contract or under this Act;
- (g) it may excuse a party to the contract from performing one or more of his obligations under the contract;
- (h) it may order that, for the purpose of computing the period of training that has been served by an apprentice or other trainee, any period or periods specified in the order be excluded;
- (i) it may withdraw the approval granted by the Commission under this Division in relation to the employment by an employer of apprentices or other trainees;
- (j) it may order an employer not to employ any apprentices or other trainees in addition to those named in the order without the approval of the committee;
- (k) it may make any consequential orders that the committee thinks necessary or expedient.

(4) The term of a contract of training shall be computed and the contract shall be construed and shall apply in accordance with an order made by the committee under subsection (3).

(5) The withdrawal of approval by the committee under subsection (3) (i) may relate to a particular apprentice or other trainee or to all the apprentices or other trainees employed by the employer.

(6) Where, pursuant to subsection (3), the committee orders one party to a contract of training to pay a sum of money to another party to the contract, that sum may be recovered by the other party as a debt.

(7) If an employer has reasonable grounds to believe that an apprentice or other trainee employed by him under a contract of training is guilty of wilful and serious misconduct, the employer may (without first obtaining the approval of the Commission) suspend him from his employment under the contract, and shall, in that event, refer the matter forthwith to the committee and confirm the reference in writing within three days of the suspension.

Penalty: Five hundred dollars.

(8) A suspension under subsection (7) shall, unless confirmed by the committee, not operate for more than seven working days.

(9) Notice shall be given by the committee to the Commission of the cancellation of a contract of training under subsection (3).

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

(11) The committee may, at any time, vary or revoke an order made by it under this section.

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

Penalty: Five hundred dollars.

(13) In this section—

“party to a contract of training” or “party” includes a person who was formerly a party to a contract of training.

13. Section 28 of the principal Act is amended by striking out from subsection (2) the passage “trade or other declared vocation” and substituting the word “occupation”.

Amendment of  
s. 28—  
Courses of pre-  
vocational  
training.

14. Section 31 of the principal Act is amended by striking out from subsection (2) the passage “the date on which the record was made” and substituting the passage “the expiry or termination of the contract of training to which the record relates”.

Amendment of  
s. 31—  
Making and  
retention of  
records.

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

D. B. DUNSTAN, Governor