

Vocational Education and Training (State Training Wage) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 9 November 1994

(Brought in by Mr Hayward and Mr McNamara)

A BILL

to amend the **Vocational Education and Training Act 1990** and
for other purposes.

Vocational Education and Training (State Training Wage) Act 1994

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to amend the **Vocational Education and Training Act 1990** so as to implement within the Victorian employee relations system the provisions of the National Training Wage Interim Award 1994 made by the Australian Industrial Relations Commission on 12 September 1994.

Section headings appear in bold italics and are not part of the Act.
(See Interpretation of Legislation Act 1984.)

*Vocational Education and Training (State Training Wage)***2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

3. Principal Act

In this Act, the **Vocational Education and Training Act 1990** is called the Principal Act.

N . 45/1990
as amended
by N s
21/1990,
91/1990,
44/1992,
45/1992,
52/1992,
83/1992,
14/1993,
18/1993 (as
amended by
N . 59/1994),
31/1994 and
62/1994.

4. Definitions

In section 3 of the Principal Act, after the definition of “Defence Force” insert—

“**employment agreement**” has the same meaning as in the **Employee Relations Act 1992**;

5. New section 9B inserted

After section 9A of the Principal Act insert—

‘9B. Functions of the Board under National Training Wage Award

(1) The Board as the relevant State Training Authority may enter into an agreement with NETTFORCE as provided by the National Training Wage Interim Award 1994 made by the Australian Industrial Relations Commission as varied from time to time and may perform the functions and exercise the powers given to it under any such agreement.

(2) In this section “NETTFORCE” means the body known as Nettforce Incorporated which is incorporated as an association

under the Associations Incorporation Act
1991 of the Australian Capital Territory.’.

6. Training schemes

(1) In section 51 of the Principal Act, after sub-section
(1) insert—

“(1A) Before making a determination under
sub-section (1) to which Schedule 3 is
relevant, the Board must have regard to the
need for there to be adequate consultation on,
and negotiation with respect to, the terms of
the determination with—

(a) the employees in the relevant vocation; or

(b) if those employees so wish, any
representative or committee of employees
authorised by the employees to represent
them.”.

(2) In section 51 (2) (h) of the Principal Act—

(a) for “before undertaking” substitute “in
connection with”;

(b) omit “and any requirement to lodge an
agreement with the Board”.

7. New section 53A inserted

At the end of Division 3 of Part 5 of the Principal
Act, insert—

“53A. Schedule 3

(1) Schedule 3 has effect.

(2) A provision of a training agreement or of
an employment agreement or of any other
contract of employment to which a trainee
within the meaning of Schedule 3 is a
party is of no effect to the extent that it
provides a term or condition of
employment that is less favourable to the

trainee than one applicable under Schedule 3.

- (3) An employer must not enter into, or purport to enter into, a training agreement or an employment agreement or any other contract of employment with a trainee within the meaning of Schedule 3 that provides a term or condition of employment that is less favourable to the trainee than one applicable under clause 6 (1) of Schedule 3.

Penalty: 100 penalty units.

- (4) If a training agreement or an employment agreement or any other contract of employment to which a trainee within the meaning of Schedule 3 is a party does not at any time comply with a term or condition of employment applicable under clause 6 (1) of Schedule 3, it must then, for the purposes of section 160 of the **Employee Relations Act 1992**, be taken to have effect as if it did.
- (5) A training agreement or an employment agreement or any other contract of employment entered into by an employer in contravention of sub-section (3) is not, for that reason only, illegal, void or unenforceable.”.

8. Amendment of Division 4 of Part 5

- (1) In the heading to Division 4 of Part 5 of the Principal Act for **“of Training”** substitute **“and Training Agreements”**.
- (2) In section 55 (1) of the Principal Act for **“declared vocation under a contract of training”** substitute **“vocation under a contract of training or training agreement”**.

- (3) In section 55 (2) of the Principal Act—
 (a) after “contract of training” (where twice occurring) **insert** “or training agreement”;
 (b) after “the contract” **insert** “or agreement”.
- 5 (4) In sections 57 (1) and (2) and 58 of the Principal Act after “contract of training” **insert** “or training agreement”.
- 10 (5) In section 59 (1) of the Principal Act for “in a declared vocation” **substitute** “or training agreement”.
- (6) In section 59 (2) of the Principal Act after “contract of training” **insert** “or training agreement”.
- 15 (7) In section 59 (3), (4) and (5) of the Principal Act after “contract” (wherever occurring) **insert** “or agreement”.
- (8) In section 60 (1) of the Principal Act—
 (a) for “for any declared vocation” **substitute** “or training agreements for any vocation”;
 (b) after “contract of training” **insert** “or training agreement”.
- 20 (9) In section 60 (2) and (3) of the Principal Act—
 (a) after “training” **insert** “or training agreement”;
 (b) after “contract” **insert** “or agreement”.

9. Powers of authorised officers

25 In section 91D (1) (b) (i) of the Principal Act after “Act” **insert** “or under the National Training Wage Interim Award 1994 made by the Australian Industrial Relations Commission as varied from time to time”.

30 **10. Evidentiary**

In section 93 (1) of the Principal Act—
 (a) after “this Act” **insert** “or the **Employee Relations Act 1992**”;

- (b) in paragraph (c) (iii)—
- (i) omit “declared”;
 - (ii) after “training” insert “or training agreement”.

11. *New Schedule 3 inserted*

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After Schedule 2 to the Principal Act insert—

‘SCHEDULE 3

STATE TRAINING WAGE PROVISIONS

1. *Definitions*

In this Schedule—

“**approved training**” means training undertaken (both on or off the job) under an approved training scheme;

“**trainee**” means a person whom an employer has undertaken to train under an approved training scheme;

“**training agreement**” means a training agreement entered into pursuant to an approved training scheme.

2. *Application*

- (1) Subject to sub-clause (3), this Schedule applies with respect to any training agreement entered into after the commencement of the **Vocational Education and Training (State Training Wage) Act 1994**.
- (2) Subject to sub-clause (3), this Schedule also applies with respect to any training agreement entered into before the commencement of the **Vocational Education and Training (State Training Wage) Act 1994** if the parties to that agreement agree that it is to apply.
- (3) The Board may, by notice published in the Government Gazette, declare any class of training agreement to be a class of training agreement to which this Schedule does not apply.
- (4) This Schedule does not apply to apprentices.

3. Objective

The objective of this Schedule is to assist in the establishment of a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of trainees, particularly young people and the long term unemployed. The system is neither designed nor intended for those who are already trained and job ready. It is not intended that existing employees shall be displaced from employment by trainees.

4. Training conditions

- (1) The trainee must perform his or her duties under the training agreement and the approved training scheme.
- (2) The employer must during the duration of the training agreement provide a level of supervision that is in accordance with that agreement and the approved training scheme.
- (3) Training must be directed at enabling the trainee to attain the standards of skill and knowledge required by the approved training scheme to be attained by persons undertaking the scheme.

5. Employment conditions

- (1) Subject to any reduction or extension of the term of the training agreement under section 60, a trainee must be engaged as a full-time employee for the term of the agreement subject to the satisfactory completion of a period of probation of a maximum of one month's duration. The employer may reduce the duration of the period of probation.
- (2) An employer must not terminate the employment of a trainee without having provided written notice of termination in accordance with the training agreement—
 - (a) to the trainee, before the termination; and
 - (b) to the Board, within 5 working days after the termination.
- (3) An employer who decides not to continue the employment of a trainee on the completion of the approved training scheme must notify the Board in writing of that decision.
- (4) If the employment of a trainee is continued after the completion of the approved training scheme, that

period of training must be regarded as service with the employer for the purposes of any provision made by or under the **Employee Relations Act 1992** or any other Act conferring entitlements on an employee having regard to his or her period of service.

- (5) A training agreement may restrict the circumstances under which a trainee may work overtime or shiftwork in order to ensure that the approved training scheme is satisfactorily completed.
- (6) A trainee must not work shiftwork unless the trainee and the employer have agreed that satisfactory provision is made for approved training under the relevant approved training scheme. Training for shiftwork employees may be applied over a cycle in excess of a week but must average over the relevant period no less than the amount of training required for non-shiftwork trainees.
- (7) Without limiting the application to the trainee of the provisions referred to in clause 7 (1), a trainee who fails to complete the approved training scheme or who cannot for any reason be placed in full-time employment with the employer on satisfactory completion of the approved training scheme is not entitled to any severance payment payable under any termination, change and redundancy provisions or any similar provisions.

6. Wages

- (1) The weekly wages payable to trainees shall be as provided by the National Training Wage Interim Award 1994 made by the Australian Industrial Relations Commission as varied from time to time.
- (2) For the purposes of applying sub-clause (1) the appropriate industry/skill level in relation to a trainee is as specified in the relevant determination made by the Board under section 51 (1).

7. Relationship with other legislation

- (1) Subject to this Schedule, the provisions of Part 2 and Division 2 of Part 3 of, and Schedule 1 (except clause 1 (c)) to, the **Employee Relations Act 1992** apply with respect to a trainee during the term of the training agreement in the same way, and to the same extent, as they apply with respect to any other employee.

- (2) The provisions of this Schedule prevail over any provision made by or under the **Employee Relations Act 1992** or any other Act which is inconsistent with them and which purports to apply with respect to a trainee.
- (3) On the completion of the approved training scheme the provisions of Part 2 and Division 2 of Part 3 of, and Schedule 1 to, the **Employee Relations Act 1992** apply with respect to the former trainee in the same way, and to the same extent, as they apply with respect to any other employee.’.

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