

# Approval requirements for apprenticeships and traineeships in NSW

November 2006

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### Apprentices and Trainees in NSW

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STATE TRAINING SERVICES

# State Training Services

NEW SOUTH WALES  
DEPARTMENT  
OF EDUCATION  
AND TRAINING



# Approval requirements for apprenticeships and traineeships in NSW<sup>1</sup>

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<sup>1</sup> This document was issued as a Commissioner’s Advice and Instructions item on 29/11/06 and is available on-line at [www.skilling.nsw.gov.au](http://www.skilling.nsw.gov.au).

## 1. Discretion of Commissioner to approve or dismiss applications for apprenticeships and traineeships

Notwithstanding anything in these guidelines, the Commissioner, or any persons delegated by the Commissioner to exercise his or her functions under the Apprenticeship and Traineeship Act 2001, may assess an application to establish an apprenticeship or traineeship on its merits and may approve or dismiss an application, or refer it to the Vocational Training Tribunal (VTT) for approval or dismissal.

## 2. Eligibility Criteria

### 2.1 Citizenship and residency status

A person is eligible to be approved as an apprentice or trainee in NSW if they are:

- an Australian citizen, or
- a foreign national with permanent residency, or
- a New Zealand passport holder who has been resident in Australia for more than six months

Temporary visa holders who are eligible for a TAFE fee exemption according to its student enrolment policy (see below) are also eligible to be approved as an apprentice or trainee. TAFE policy limits fee exemptions to certain types of temporary visa holders and includes a requirement that the visa is valid beyond the length of the course. These guidelines also require that the visa should be valid beyond the nominal term of the training contract for which the application has been made.

For detailed information, refer to the Advice and Instructions item *Citizenship and residency status requirements for persons who may be approved to undertake an apprenticeship or traineeship in NSW*, issued 8/1/04 and updated 1/2/06.<sup>2</sup>

Detailed information about the policy and conditions relating to temporary visa holders are published on the TAFE NSW website.<sup>3</sup>

### 2.2 New entrant trainee eligibility requirements

New entrant eligibility requirements relate to traineeships only. Eligibility for new entrant trainee status relates to a person's employment history with their traineeship employer. The requirements detailed below apply equally to Group Training Organisations as to other employers.

#### *2.2.1 NE traineeship eligibility – general rule*

A person is eligible to be approved as a new entrant trainee if they have been employed by their traineeship employer:

- for less than 3 months as a full-time employee prior to the commencement of the traineeship

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<sup>2</sup> <http://apprenticeship.det.nsw.edu.au/html/advins/ats04007.htm>

<sup>3</sup> [https://www.det.nsw.edu.au/policies/student\\_serv/equity/tafe\\_temp\\_visa/2006TVHmandatoryV1.0.pdf](https://www.det.nsw.edu.au/policies/student_serv/equity/tafe_temp_visa/2006TVHmandatoryV1.0.pdf)

- for less than 12 months as a part-time or casual employee prior to the commencement of the traineeship
- for less than 12 months in a combination of part-time, casual and full-time employment prior to the commencement of the traineeship

*2.2.2 NE traineeship eligibility – breaks in employment of less than 6 months*

In assessing new entrant eligibility, breaks of employment of less than 6 months should not be taken into account. The number of months of full-time, part-time or casual employment with the traineeship employer should be calculated by adding employment prior to any break of employment of less than 6 months to any subsequent employment after the break of employment up to the traineeship commencement date.

*2.2.3 NE traineeship eligibility – breaks in employment of more than 6 months*

This provision regarding breaks in employment does not affect NE trainees who cancel their traineeship before resuming work with the same employer at a later time. Irrespective of the duration of the break in employment, these trainees will be able to recommence a new entrant traineeship, subject to the normal 3 month/12 month NE eligibility rule which is to be applied from the recommencement date.

*2.2.4 NE traineeship eligibility – GTOs and host employers*

Where a person is to be employed as a trainee by a Group Training Organisation and placed with a host employer for whom they have previously worked, their eligibility to be approved as a new entrant trainee will be assessed as if they were to be employed directly by that host employer.

Similarly, where a person is to be employed directly by an employer with whom they were previously hosted when employed by a Group Training Organisation, their eligibility to be approved as a new entrant trainee will be assessed as if they had been employed directly by that host employer for the entire period of their placement with that host employer by the GTO.

*2.2.5 NE traineeship eligibility – change of ownership*

In determining whether the traineeship employer is the same legal employer as a previous employer, the principle of “carriage of benefit” as set out in the Advice and Instructions item *Existing Worker Trainee - Definition (21/12/01)*<sup>4</sup> is to apply. If an employee’s accrued entitlements are transferred directly from one employer to the next without having been paid out, the employee is considered to have been continuously employed by that business for the purposes of assessing eligibility for new entrant status.

*2.2.6 NE traineeship eligibility – school leavers*

The above restrictions on new entrant trainee eligibility do not apply to school-leavers. A school-leaver (someone who until recently attended school full-time) is eligible to be approved as a new entrant trainee if they have worked for their current employer for less than 3 months full-time or 12 months part-time or casually *since*

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<sup>4</sup> <http://apprenticeship.det.nsw.edu.au/html/advins/ats08016.htm>

***leaving school or completing a school-based traineeship, whichever is the later.*** Any employment with this employer while they were a school student or school-based trainee is to be disregarded for the purposes of determining new entrant eligibility. All educational institutions approved by the Board of Studies to deliver the Higher School Certificate, including Australian Technical Colleges, are considered to be “schools” for the purpose of determining new entrant traineeship eligibility.

#### *2.2.7 NE traineeship eligibility – CDEP employment*

As for school leavers, previous employment as a CDEP participant is to be disregarded for the purposes of establishing eligibility as a new entrant trainee.

#### *2.2.8 Progression to higher-level traineeships as a new entrant trainee*

New entrant trainees may retain new entrant status in moving to a traineeship in a higher level qualification with the same employer providing that:

- the new traineeship is in the same traineeship vocation or is matched to a qualification from the same Training Package
- the application specifies a commencement date within three months of successful completion of the previous traineeship

### 2.3 Eligibility for approval as an apprentice or trainee for people holding existing qualifications in the vocation

#### *Apprenticeships*

A person who has completed a trade qualification and has significant practical experience working in the trade should be encouraged to apply to the VTT for trade skills recognition rather than to apply for an apprenticeship.

Section 25 of the A&T Act provides that in most cases<sup>5</sup> people under 21 years of age must not be employed in a trade vocation unless they are an apprentice or a qualified tradesperson. Consequently, an apprenticeship will be approved, subject to other approval requirements, for someone under 21 years who already holds the relevant qualification but has not completed a formal apprenticeship and does not have sufficient industry experience to successfully apply for trade skills recognition. The Commissioner or VTT will consider requests for credit towards an apprenticeship in these circumstances.

#### *Traineeships*

A person who has completed the qualification specified in the Vocational Training Order (VTO) for a traineeship vocation or who has completed a relevant qualification at a higher level will not be approved as a trainee. This includes applications from people who wish to undertake a different stream at the same level within the same traineeship vocation.

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<sup>5</sup> See s25(2) of the A&T Act for exceptions to this general rule

### **3. Compliance with Vocational Training Guidelines (VTGs) and Vocational Training Orders (VTOs)**

An application to establish an apprenticeship or traineeship must comply with the requirements of any relevant Vocational Training Guidelines, as well as the Vocational Training Order for that vocation. Applications that specify training arrangements that vary from those specified in the relevant VTO (such as an alternative qualification or a shorter or longer term of training) must be lodged with supporting documentation.

### **4. Training Plans<sup>6</sup>**

A Training Plan Summary (TPS), endorsed by the Registered Training Organisation (RTO), must be prepared and lodged with the apprenticeship or traineeship application.

RTOs are required to develop a full training plan in consultation with the parties within 6 weeks of the commencement of formal training (for contracts with a nominal full-time duration up to and including 12 months) or within 12 weeks (for contracts with a nominal full-time term of more than 12 months). For school-based apprenticeships and traineeships, a Full Training Plan (FTP) must be lodged with the training contract under AAC Pending arrangements.

### **5. Late applications**

DET policy is that the Commissioner will deal with all applications by approving them, dismissing them or referring them to the Vocational Training Tribunal (VTT). Further information about late applications, including documentation requirements, are set out in an Advice and Instructions item *Late Lodged Training Contracts*, issued 25/10/06<sup>7</sup>.

### **6. Concurrent training contracts**

There are no restrictions preventing a learner from undertaking two or more concurrent apprenticeships or traineeships, providing that they can meet their obligations under each. In these instances eligibility for Commonwealth or NSW government funding is restricted to the first training contract.

For further information see the Advice and Instructions item *Concurrent Training Contracts*, issued 5/3/03 and updated 15/8/05<sup>8</sup>.

### **7. Coverage under an appropriate industrial award or industrial agreement**

Section 7(3) (b) of the A&T Act provides that an application to establish an apprenticeship or traineeship must identify the industrial award or agreement under which the apprentice or trainee will be employed.

Most Vocational Training Orders (VTOs) generally include the following additional requirement:

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<sup>6</sup> <http://apprenticeship.det.nsw.edu.au/html/trainingplansummary.htm>

<sup>7</sup> <http://apprenticeship.det.nsw.edu.au/html/advins/ats08038.htm>

<sup>8</sup> <http://apprenticeship.det.nsw.edu.au/html/advins/ats08037.htm>

*Applications under the **Apprenticeship and Traineeship Act 2001** to establish any traineeship or apprenticeship will not be approved unless the Commissioner is satisfied that appropriate industrial arrangements are in place.*

“Appropriate industrial arrangements” means that the award or agreement is registered with the appropriate industrial authority, such as the NSW Industrial Relations Commission for NSW awards and enterprise agreements, the Australian Industrial Relations Commission (AIRC) for federal awards or the Office of the Employment Advocate for Australian Workplace Agreements (AWAs) or federal collective agreements.

Employers have a responsibility to ensure that the industrial award or agreement nominated by them is appropriate for their workplace. If necessary they should seek advice from the relevant industrial authority or their industry association.

#### Casual pay rates

Under the A&T Act there is no such thing as a “casual” apprentice or trainee. Subject to appropriate industrial coverage, employers who choose to employ part-time trainees under casual rates of pay are free to do so, but should be informed that they are obliged to meet both their industrial and training obligations.

As a trainee is an employee under a period contract, he or she is likely to accrue leave and other entitlements. Employers proposing to employ trainees under casual pay rates should be encouraged to seek independent industrial advice regarding their obligations.

The training obligations of all employers, including employers of trainees paid under casual pay rates, include the requirements for the employer to:

- obtain the consent of the trainee to any request for cancellation, suspension or transfer
- allocate paid work time for formal training and liaise with the RTO in developing and implementing the training plan
- provide regular work that meets the minimum average hours requirement as specified in the training contract

The requirement for an employer to offer a part-time trainee minimum average hours per week (including time spent undertaking formal training through the RTO) does not mean that the trainee must receive that number of hours work and training each and every week. However the trainee must be offered some work and/or training every week and to ensure that the on-the-job requirements are met the hours of engagement should meet the minimum average over a period of 4-8 weeks.

For more information refer to Advice and Instructions item *Casual Employee – NSW Approval Requirements for a Casual Employee Established as an Apprentice/Trainee*

*under an Apprenticeship/Traineeship Training Contract, issued 29/3/05 and updated 15/8/05.*<sup>9</sup>

## **8. Applications for trainee apprenticeships**

The reference in VTOs to appropriate industrial arrangements (see above) limits the application of trainee apprenticeships to those trades where the nominated industrial award or agreement specifies pay rates for trainee apprentices.

Even if there is appropriate industrial coverage, an application for a trainee apprenticeship may be dismissed under s9 of the A&T Act if the Commissioner considers that it is inappropriate in the circumstances.<sup>10</sup>

## **9. Employers' capacity to train**

In assessing applications to establish an apprenticeship or traineeship, the Commissioner for Vocational Training (through his or her delegates) must be satisfied that an employer has the capacity to provide the work-based training in the relevant vocation (s9, A&T Act).

This assessment takes into consideration:

- facilities and equipment
- range of work
- qualified and/or experienced supervisors

### 9.1 Facilities and equipment

The workplace must have facilities and equipment that will allow the apprentice or trainee to develop the competencies required for this vocation. Where the workplace does not have a sufficient range of facilities or equipment, an apprenticeship or traineeship should only be approved if the assessing officer is satisfied that the employer has put in place appropriately-managed hosting arrangements to supplement the apprentice or trainee's on-the-job training.

### 9.2 Range of work

The employer must be able to provide work-based training to the apprentice or trainee across the range of competencies identified in the Full Training Plan (FTP). Where the FTP has not yet been developed, the employer must be able to provide work-based training across a sufficient range of competencies that will allow the apprentice or trainee to meet competency requirements for the qualification as specified in the relevant training package. Where the employer does not have a sufficient range of work, an apprenticeship or traineeship should only be approved if the assessing officer is satisfied that the employer has put in place arrangements to supplement the apprentice or trainee's on-the-job training so that the full range of competencies is covered.

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<sup>9</sup> <http://apprenticeship.det.nsw.edu.au/html/advins/atadg028.htm>

<sup>10</sup> <http://apprenticeship.det.nsw.edu.au/html/advins/atadg026.htm>

### 9.3 Qualified and/or experienced supervisors

Specific supervision requirements are not identified in the A&T Act. Some industrial awards or agreements do specify ratios of qualified supervisors for each apprentice or trainee, and minimum requirements for supervision in certain industries may also be set by WorkCover or by industry-specific regulations or licensing arrangements.

Employers are obliged to meet these requirements.

Apprentices are to be supervised and trained on-the-job by qualified tradespeople. The A&T Act defines a qualified tradesperson as:

- (a) a person who has a Craft Certificate or Certificate of Proficiency for that vocation, or
- (b) a person who has qualifications and experience that, pursuant to a determination under section 35, 36 or 37, entitle the person to a Craft Certificate or Certificate of Proficiency for that vocation.

As the on-the-job supervision and training arrangements will vary from one industry to another, and between workplaces even within the same industry, each application will be considered on its merits. However the following considerations will be taken into account when assessing an application for an apprenticeship or traineeship:

- Is there a person or persons with the appropriate skills and experience nominated by the employer to supervise the apprentice or trainee and facilitate their on-the-job training?
- Is the level of workplace supervision sufficient to ensure the health, safety and welfare of the apprentice or trainee?
- Are there arrangements in place to monitor the apprentice or trainee's progress in learning the skills of their vocation, to provide feedback to the apprentice or trainee and to answer any questions they may have?
- Is there a responsible person in the workplace other than the apprentice or trainee who has the employer's authority to deal with customer complaints, problems or accidents in the workplace?

Supervision and on-the-job training arrangements should take into account the stage the apprentice/trainee is at and their level of knowledge and skills. Where apprentices and trainees are competent in certain areas and do not require supervision to perform specific tasks, employers should be encouraged to ask the RTO to formalise these arrangements through competency assessment.

## **10. Employer's commitment to meeting training obligations**

The Commissioner must be satisfied that the employer has the capacity and commitment to meet their obligations under ss13 & 14 of the A&T Act.

Section 13 states that an employer must take all reasonable steps to:

- ensure that the apprentice or trainee receives the work-based component of the training
- enable the apprentice or trainee to gain the appropriate qualification by releasing them for formal training and liaising with the RTO in relation to the apprentice or trainee's attendance or participation in formal training
- discharge his or her general obligations as an employer

Section 14 sets out the duties of employers using host employment arrangements.

In assessing an application to establish an apprenticeship or traineeship, an employer's previous record in training apprentices and trainees and in meeting these obligations may be taken into account.

#### 10.1 Work-based (on-the-job) training

See section 9, above.

#### 10.2 Employer support for formal training

Employers have a critical role to play in supporting formal training coordinated by the Registered Training Organisation (RTO). This support will vary according to the vocation and the type of training delivery chosen by the parties and specified on the Training Plan, but may include:

- releasing the apprentice or trainee in paid work time to attend training delivered by the RTO on- or off-site
- allowing the apprentice or trainee paid work time to undertake work-based assessment tasks
- providing support for self-paced on-the-job learning
- monitoring skill development and noting progress in a competency record book

#### 10.3 Employers' lawful obligations as an employer

This includes other legal obligations of employers, such as those to:

- comply with NSW or federal industrial law
- comply with NSW or federal licensing requirements
- comply with NSW OH&S legislation and provide a safe and harassment-free workplace