



Training Guarantee (Administration) Act 1990

No. 60 of 1990

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AMENDMENTS OF CERTAIN ACTS IN RELATION TO THE TRAINING GUARANTEE
CHARGE



Training Guarantee (Administration) Act 1990

No. 60 of 1990

An Act relating to the establishment and administration of the Training Guarantee Scheme, and for other purposes

[Assented to 16 June 1990]

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Training Guarantee (Administration)
Act 1990*.

Commencement

- 10 2. (1) Subject to subsections (2) and (3), this Act commences on
1 July 1990.
(2) Section 43 and Part 10 commence on a day to be fixed by
Proclamation.

(3) If section 43 and Part 10 do not commence under subsection (2) before 1 January 1991, they commence on that day.

Objects

3. (1) The principal objects of this Act are to increase, and improve the quality of, the employment related skills of the Australian workforce so that it works more productively, flexibly and safely, thereby increasing the efficiency and international competitiveness of Australian industry.

(2) Other objects of this Act include:

- (a) improving the quality of employment related training provided by employers by encouraging the adoption of structured training; and
- (b) encouraging further employer investment in employment related training; and
- (c) ensuring a more equitable distribution of effort in relation to employment related training among employers; and
- (d) accelerating change in industry perceptions of the value of employment related training.

(3) The objects of this Act are to be achieved by guaranteeing a minimum level of expenditure by employers on quality employment related training.

(4) It is the intention of the Parliament that this Act should be implemented in a manner that, as far as is consistent with the achievement of its objects, minimises the administrative burden on employers.

Interpretation—definitions

4. In this Act, unless the contrary intention appears:

“**annual national payroll**”, in relation to an employer and a year, means the aggregate of the salary or wages paid by the employer during the year:

- (a) in Australia; or
- (b) outside Australia in relation to services performed or rendered wholly in Australia;

“**apprentice**” means a person who is employed as an apprentice under an industrial instrument;

“**arrangement**” means, in section 19:

- (a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

“**assessment**” means:

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(a) the ascertainment of an employer's training guarantee shortfall in a year and of the training guarantee charge payable on the shortfall; or

(b) the ascertainment of additional charge payable under Part 9;
“**authorised officer**” means an officer or employee within the meaning of the *Public Service Act 1922* who has been authorised in writing by the Commissioner for the purposes of the provision in which the expression appears;

“**AWE amount**” has the meaning given by subsection 5 (2);

“**building**” includes a part of a building;

“**Commissioner**” means the Commissioner of Taxation;

“**Commonwealth Department**” means:

(a) a Department of State of the Commonwealth; or

(b) a Department of the Parliament; or

(c) a branch or part of the Australian Public Service in relation to the staff of which a person has, under an Act, the powers of, or exercisable by, a Secretary under the *Public Service Act 1922*;

“**company**” includes any body or association (whether incorporated or unincorporated), except a partnership;

“**data processing device**” means any article or material from which information is capable of being reproduced with or without the aid of any other article or device;

“**depreciable property**” means plant or articles within the meaning of section 54 of the *Income Tax Assessment Act 1936*;

“**Deputy Commissioner**” means a Deputy Commissioner of Taxation;

“**eligible training expenditure**” has the meaning given by sections 25 and 26;

“**eligible training program**” has the meaning given by section 27;

“**employee**” means a person who receives, or is entitled to receive, salary or wages, and includes a person employed by:

(a) a State or Territory; or

(b) a State or Territory authority;

but does not include:

(c) an employee of a religious institution whose duties are solely or principally:

(i) pastoral duties; or

(ii) duties directly related to the practice, study, teaching or propagation of religious beliefs; or

(d) a person who is not a resident of Australia during the whole or a part of the year concerned; or

(e) a prescribed person;

“**employer**” means a person who pays, or is liable to pay, salary or wages, and includes:

- (a) a State or Territory; and
- (b) a State or Territory authority; and
- (c) in the case of a partnership—each partner; and
- (d) in the case of any other unincorporated association or body of persons—the manager or other principal officer of the association or body;

“employment related skill” includes a skill used, or that may be used, by a person in the course of:

- (a) holding any office or appointment, performing any functions or duties, engaging in any work, or doing anything, that results in the person’s being an employee; and
- (b) any business, occupation, profession or trade carried out by the person otherwise than as an employee;

“Federal Court” means the Federal Court of Australia;

“Fund” means the Training Guarantee Fund established by section 32;

“government body” means:

- (a) the Commonwealth or a State or Territory; or
- (b) a Commonwealth, State or Territory authority;

“higher education institution” has the same meaning as in the *Employment, Education and Training Act 1988*;

“indexation factor” has the meaning given by subsection 5 (1);

“industrial instrument” means:

- (a) a Commonwealth, State or Territory law; or
- (b) an award, order, determination or industrial agreement in force under any such law;

“liability to the Commonwealth” means a liability to the Commonwealth arising under an Act of which the Commissioner has the general administration;

“liquidator”, in relation to a company, means a person who, whether or not appointed as liquidator, is required by law to carry out the winding-up of a company;

“lodge” means lodge with the Commissioner;

“minimum allowable apprentice or trainee amount” has the meaning given by section 6;

“minimum training rate” has the meaning given by subsection 15 (2);

“minimum training requirement” has the meaning given by subsection 15 (1);

“Minister” means the Minister administering the *Employment, Education and Training Act 1988*;

“modifications” includes additions, omissions and substitutions;

“natural person” does not include a natural person in the capacity of trustee;

“net eligible training expenditure” has the meaning given by subsection 24 (1);

“offence against this Act” includes an offence relating to this Act against:

(a) the *Crimes Act 1914*; or

(b) the *Taxation Administration Act 1953*;

“person” includes:

(a) a body politic; and

(b) a body corporate; and

(c) a partnership; and

(d) any other unincorporated association or body of persons; and

(e) a person in the capacity of trustee;

“proceeding under this Act” includes:

(a) a proceeding for an offence against this Act; and

(b) a proceeding under the *Taxation Administration Act 1953* relating to this Act;

“register of industry training agents” means the register kept under section 89;

“registered industry training agent” means a person specified in the register of industry training agents;

“reimbursement” includes:

(a) a donation or contribution; or

(b) a fee or charge;

but does not include a prescribed matter;

“remuneration”, in relation to a Commonwealth employee, means remuneration of the Commonwealth employee in his or her capacity as a Commonwealth employee;

“resident of Australia” has the meaning given by section 7;

“responsible Department”, in relation to a Commonwealth employee, means:

(a) if the employee’s remuneration is paid solely or principally out of money appropriated under an annual Appropriation Act—the Department in relation to which the money was appropriated; and

(b) if the employee’s remuneration is paid solely or principally out of money appropriated under an Act other than an annual Appropriation Act and:

(i) the employee performs his or her duties as a Commonwealth employee in, or in relation to, a Department—that Department; or

(ii) the employee does not perform his or her duties as a

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Commonwealth employee in, or in relation to, a Department—the Department of State of the Commonwealth administered by the Minister who administers the Act under which that money was appropriated; and

- (c) if the employee's remuneration is paid solely or principally out of money appropriated by the Constitution—the Department of Administrative Services;

“salary or wages” means salary, wages, commission, bonuses or allowances paid (whether at piece-work rates or otherwise) to an employee in his or her capacity as an employee and includes, for example, a payment made:

- (a) under a contract that is wholly or principally for the labour of the person to whom the payment is made if:

(i) the person making the payment is not a natural person;
or

(ii) the payment is not wholly or principally of a private or domestic nature; and

- (b) by a company by way of remuneration to a director of the company; and

- (c) by way of commission to an insurance or time-payment canvasser or collector;

but does not include:

- (d) fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986*; or

- (e) prescribed payments;

“school” has the same meaning as in the *Employment, Education and Training Act 1988*;

“Second Commissioner” means a Second Commissioner of Taxation;

“skill” includes competence and knowledge;

“structured training program” has the meaning given by subsection 27 (2);

“subsidy” means direct pecuniary aid provided by a government body, but does not include a prescribed matter;

“taxation officer” means a person exercising powers, or performing functions, under this Act;

“technical and further education institution” has the same meaning as in the *Employment, Education and Training Act 1988*;

“this Act” includes the regulations;

“threshold amount” has the meaning given by section 8;

“trainee” means a person who is a trainee under the Australian Traineeship System;

“training” includes instruction and closely supervised practice;

“training advisory body” means:

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- (a) in subsection 30 (4)—The National Training Board Ltd. or, if another person is prescribed for the purposes of this paragraph, that other person; or
- (b) in any other provision of this Act—The National Training Board Ltd. or, if another person is prescribed for the purposes of this paragraph, that other person;

“training advisory certificate” means a certificate given under subsection 43 (2), 44 (1) or (2) or 61 (2);

“training guarantee agreement” means an agreement under section 35;

“training guarantee charge” means charge imposed by the *Training Guarantee Act 1990*;

“training guarantee shortfall” has the meaning given by section 14;

“training guarantee statement” means a training guarantee statement lodged under Division 1 of Part 6;

“training institution” means:

- (a) a higher education institution, a technical and further education institution or a school; or
- (b) a person who conducts training for profit or reward; or
- (c) a prescribed person;

“Tribunal” means the Administrative Appeals Tribunal;

“trustee” includes:

- (a) a person appointed or constituted trustee by:
 - (i) act of parties; or
 - (ii) order or declaration of a court; or
 - (iii) operation of law; and
- (b) an executor, administrator or other personal representative of a deceased person; and
- (c) a guardian or committee; and
- (d) a receiver or receiver and manager; and
- (e) an official manager or liquidator of a company; and
- (f) a person:
 - (i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust; or
 - (ii) acting in any fiduciary capacity; or
 - (iii) having the possession, control or management of any real or personal property of a person under any legal or other disability;

“year” means financial year.

Interpretation—meaning of “indexation factor”

5. (1) The **indexation factor** for a year is whichever is the greater of the following:

- (a) 1;
- (b) the number calculated (to 3 decimal places), in relation to the year, using the formula:

$$\frac{\text{AWE amount for March quarter immediately preceding year}}{\text{AWE amount for March quarter immediately preceding that March quarter.}}$$

(2) The **AWE amount** for a quarter is the estimate of the full-time adult average weekly total earnings for persons in Australia for the middle month of the quarter published by the Australian Statistician in relation to the month.

(3) If the Australian Statistician publishes an estimate of the full-time adult average weekly total earnings for persons in Australia for a period for which such an estimate was previously published by the Australian Statistician, the publication of the later estimate is to be disregarded for the purposes of this section.

(4) If the number calculated for the purposes of paragraph (1) (b) in relation to a year would, if it were calculated to 4 decimal places, end with a number greater than 4, the number ascertained under that paragraph in relation to the year is to be taken to be the number calculated to 3 decimal places and increased by 0.001.

Interpretation—meaning of “minimum allowable apprentice or trainee amount”

6. The **minimum allowable apprentice or trainee amount** is:

- (a) for the year commencing on 1 July 1990—\$1,000; and
- (b) for a later year—the amount calculated in relation to the year, using the formula:

$$\frac{\text{minimum allowable apprentice or trainee amount for immediately preceding year}}{\text{indexation factor for year.}}$$

Interpretation—meaning of “resident of Australia”

7. For the purposes of this Act, a person is a **resident of Australia** during the whole or a part of a year if, during the whole or that part of the year:

- (a) the person is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* otherwise than because of subsection 7A (2) of that Act; or
- (b) if the person is a company that is not incorporated in Australia but carries on business in Australia—the person would be a resident of Australia for the purposes of that Act otherwise than

because of that subsection if the words “, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia” were omitted from paragraph (b) of the definition of “resident” in subsection 6 (1) of that Act.

Interpretation—meaning of “threshold amount”

8. The threshold amount is:

- (a) for the year commencing on 1 July 1990—\$200,000; and
- (b) for a later year—the amount calculated, in relation to the year, using the formula:

$$\text{threshold amount for immediately preceding year} \times \text{indexation factor for year.}$$

Act binds Crown

9. (1) This Act binds the Crown in right of the Commonwealth, each State, the Australian Capital Territory, the Northern Territory and Norfolk Island.

(2) Nothing in this Act permits the Crown to be prosecuted for an offence.

PART 2—LIABILITY AND NOTIONAL LIABILITY TO PAY TRAINING GUARANTEE CHARGE

Division 1—Liability of employers other than the Commonwealth

Application of Division

10. This Division does not apply to:

- (a) the Commonwealth; or
- (b) a Commonwealth authority that cannot, by a Commonwealth law, be made liable to taxation by the Commonwealth.

Charge payable by employer

11. Subject to this Act, training guarantee charge imposed on an employer’s training guarantee shortfall in a year is payable by the employer.

Election by members of business groups

12. (1) Two or more corporations who are members of a business group may elect to have themselves treated as a single employer in relation to a year for the purposes of this Act.

(2) An election may be made in relation to a year by giving written notice in the prescribed form to the Commissioner on or before 30 September in the following year.

(3) If members of a business group make an election:

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- (a) this Act applies, with any necessary modifications, to the members as if they were a single person during the year; and
- (b) the members are jointly and severally liable for the payment of any training guarantee charge payable by them for the year.

(4) Two or more corporations are members of a business group for the purposes of this section if they are related corporations within the meaning of the *Companies Act 1981*.

Charge not payable unless employer has training guarantee shortfall etc.

13. (1) Training guarantee charge is not payable by an employer for a year unless the employer has a training guarantee shortfall in the year.

(2) Training guarantee charge may also not be payable by the employer under any of the following provisions:

- (a) section 16 (Exemption for employers with small annual national payrolls);
- (b) section 17 (Exemption for particular employers);
- (c) section 18 (Exemption for non-resident employers).

Determination of training guarantee shortfall

14. The training guarantee shortfall of an employer in a year is the amount (being an amount not below 0) calculated, in relation to the employer and the year, using the formula:

minimum training requirement — net eligible training expenditure.

Minimum training requirement

15. (1) The minimum training requirement of an employer in a year is the amount calculated, in relation to the employer and the year, using the formula:

minimum training rate × annual national payroll.

(2) The minimum training rate is:

- (a) for the year commencing on 1 July 1990 and the year commencing on 1 July 1991—1%; and
- (b) for a later year—1.5%.

Exemption for employers with small annual national payrolls

16. Training guarantee charge is not payable by an employer for a year if the annual national payroll of the employer for the year is less than the threshold amount for the year.

Exemption for particular employers

17. Training guarantee charge is not payable by an employer that is:

- (a) a public benevolent institution (other than a public hospital);
or

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- (b) a religious institution in relation to those of its employees whose duties are solely or principally:
 - (i) pastoral duties; or
 - (ii) duties directly related to the practice, study, teaching or propagation of religious beliefs.

Exemption for non-resident employers

18. Training guarantee charge is not payable by an employer for a year unless the employer is a resident of Australia during the whole or a part of the year.

Arrangements to avoid or reduce training guarantee charge

19. If:

- (a) an employer makes an arrangement with another person; and
- (b) as a result of the arrangement the employer's training guarantee shortfall in a year is reduced; and
- (c) in the Commissioner's opinion the arrangement was made solely or principally for the purpose of reducing the amount of training guarantee charge payable by the employer for the year;

the employer is liable to pay for the year an amount of training guarantee charge equal to the amount that, in the Commissioner's opinion, the employer would have been liable to pay if the arrangement had not been made.

Division 2—Notional liability of the Commonwealth and certain Commonwealth authorities

Object of Division

20. The object of this Division is to make provision for the notional application of training guarantee charge to:

- (a) the Commonwealth; and
- (b) Commonwealth authorities that cannot, by a Commonwealth law, be made liable to taxation by the Commonwealth.

Application of Act to Commonwealth Departments

21. (1) Subject to subsection (2), this Act (except this Division) applies to a Commonwealth Department as if:

- (a) the Department, and not the Commonwealth, were the employer of each Commonwealth employee in relation to which it is the responsible Department; and
- (b) the Department paid the remuneration of each such employee.

(2) Part 7 (except section 54 and subsections 56 (1) and (3) and 57 (1), (2) and (4)) does not apply in relation to the Department.

Application of Act to certain Commonwealth authorities

22. (1) Subject to subsection (2), this Act (except this Division) applies to a Commonwealth authority that under a Commonwealth law cannot be made liable to taxation by the Commonwealth as if it were not such an authority.

(2) Part 7 (except section 54 and subsections 56 (1) and (3) and 57 (1); (2) and (4)) does not apply in relation to the authority.

Directions by Minister for Finance

23. (1) The Minister for Finance may give any written directions that are necessary or convenient to be given for carrying out or giving effect to the object of this Division and, in particular, may give directions about the transfer of money within the Public Account.

(2) A direction has effect, and must be complied with, despite any other Commonwealth law.

(3) A direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART 3—ELIGIBLE TRAINING EXPENDITURE AND PROGRAMS

Meaning of net eligible training expenditure

24. (1) The **net eligible training expenditure** of an employer in a year is the amount (being an amount not below 0) calculated, in relation to the employer and the year, using the formula:

$$\text{total eligible training expenditure} \text{ — } \text{total eligible training subsidies and reimbursements.}$$

(2) **Total eligible training expenditure** is the total of the eligible training expenditure incurred by the employer in the year.

(3) **Total eligible training subsidies and reimbursements** is the total of the subsidies and reimbursements received by the employer in the year in relation to eligible training programs.

Meaning of eligible training expenditure

25. (1) Eligible training expenditure of an employer is expenditure incurred by the employer that is directly attributable solely or principally to eligible training programs.

(2) Without limiting subsection (1), the employer's eligible training expenditure includes expenditure incurred by the employer that is directly attributable solely or principally to:

- (a) determining the need for eligible training programs; and
- (b) preparing and reviewing strategic and other plans in relation to eligible training programs; and

- (c) developing, providing, evaluating and administering eligible training programs; and
- (d) developing and administering accounting and information systems in relation to eligible training programs.

(3) Without limiting subsection (1), but subject to subsection (4), the employer's eligible training expenditure includes amounts paid, and the value of property provided, during the year concerned, to another person (whether voluntarily or by requirement of law) solely for the purpose of enabling the other person or a third person to carry out (whether or not on behalf of the employer) an activity referred to in paragraph (2) (a), (b), (c) or (d).

(4) An employer's eligible training expenditure does not include an amount paid in relation to, or in relation to the reduction or discharge of, any liability to pay payroll tax.

Examples of eligible training expenditure

26. (1) Examples of eligible training expenditure of an employer include:

- (a) expenditure incurred by the employer by way of salary or wages paid to an employee that is directly attributable to a period during which the employee was solely or principally engaged in participating in an eligible training program; and
- (b) expenditure incurred by the employer in relation to:
 - (i) meals and accommodation; or
 - (ii) child care;for an employee or other person that is directly attributable to a period during which the employee or other person was solely or principally engaged in participating in an eligible training program; and
- (c) expenditure incurred by the employer for travel for an employee or other person that is solely or principally for the purpose of enabling the employee or other person to participate in an eligible training program; and
- (d) expenditure incurred by the employer by way of:
 - (i) payment or reimbursement of:
 - (A) fees; and
 - (B) contributions payable or paid under Chapter 4 of the *Higher Education Funding Act 1988*; and
 - (ii) payments made in relation to, or in relation to the reduction or discharge of, any indebtedness to the Commonwealth under that Chapter;in relation to eligible training programs; and
- (e) expenditure incurred by the employer by way of salary or wages paid to an employee that is directly attributable to a period

during which the employee was solely or principally engaged in an activity referred to in paragraph 25 (2) (a), (b), (c) or (d); and

- (f) expenditure incurred by the employer in relation to:
 - (i) travel, meals or accommodation; or
 - (ii) child care;for an employee or other person that is directly attributable to a period during which the employee or other person was solely or principally engaged in an activity referred to in paragraph 25 (2) (a), (b), (c) or (d); and
- (g) expenditure incurred by the employer in relation to consumables whose consumption is directly attributable solely or principally to an activity referred to in paragraph 25 (2) (a), (b), (c) or (d); and
- (h) capital expenditure incurred by the employer that is directly attributable to the acquisition, construction, extension, alteration or improvement of a building or depreciable property intended solely or principally for use, or used solely or principally, for the purpose of engaging in an activity referred to in paragraph 25 (2) (a), (b), (c) or (d); and
- (j) expenditure incurred by the employer that is directly attributable to rent paid for a building used solely or principally for the purpose of engaging in an activity referred to in paragraph 25 (2) (a), (b), (c) or (d); and
- (k) expenditure incurred by the employer that is directly attributable to the hiring or leasing of equipment used solely or principally for the purpose of engaging in an activity referred to in paragraph 25 (2) (a), (b), (c) or (d).

(2) If, in any year, an employer incurs capital expenditure of a kind referred to in paragraph (1) (h) in relation to depreciable property, the employer may, instead of claiming all the expenditure as eligible training expenditure for the year, claim as eligible training expenditure for that year and subsequent years an amount equal to the amount (if any) that is, for the year concerned, an allowable deduction in relation to the property under subsection 54 (1) of the *Income Tax Assessment Act 1936*.

(3) The examples are not exhaustive.

(4) If an example is inconsistent with section 25, the example prevails.

Meaning of eligible training program

27. (1) A training program is an **eligible training program** if:

- (a) the program is a structured training program; and
- (b) the sole or principal object of the program is to develop, maintain or improve employment related skills of employees or

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other persons, and a significant object of the program is not recreation or another matter that is not employment related.

(2) A training program is a **structured training program** if it satisfies the following conditions:

- (a) the program is designed or approved by a person who is appropriately qualified or experienced to design a training program of the relevant type;
- (b) the skills to be acquired by the participants in the program are clearly identified before the program begins;
- (c) the means of imparting the skills to the participants are clearly identified before the program begins;
- (d) before the program begins:
 - (i) the expected program outcomes are clearly formulated;
or
 - (ii) the means of identifying the extent to which the program has enhanced the participants' productivity are clearly formulated.

(3) Subject to subsection (4), a training program may be an eligible training program whether or not:

- (a) it is provided personally by the employer concerned; and
- (b) it consists of or includes on-the-job training.

(4) An eligible training program that consists of or includes on-the-job training:

- (a) must include periods of instruction; and
- (b) may include related periods of closely supervised practice; but
- (c) cannot include any generally supervised practice or work experience.

(5) A reference in paragraph (1) (b) to other persons is a reference to other persons who are residents of Australia during the whole or a part of the year concerned.

Election by employer for application of minimum allowable apprentice or trainee amount

28. (1) If an employer has employees who are apprentices or trainees at any time in a year, the employer may elect that this section applies to the year.

(2) If the employer makes an election, the portion of the employer's net eligible training expenditure in the year attributable to each apprentice or trainee is (instead of the amount that would, apart from this section, be attributable to the apprentice or trainee under this Part):

- (a) if the employee is an apprentice or trainee in relation to the employer for the whole of the year—the minimum allowable apprentice or trainee amount for the year; and

- (b) in any other case—the amount calculated, in relation to the employer and the year, using the formula:

$$\frac{N}{12} \times M$$

where:

N is the number of months in the year in which the employee is, during the whole or a part of the month, an apprentice or trainee in relation to the employer; and

M is the minimum allowable apprentice or trainee amount for the year.

Election by employer in relation to approved entry-level training arrangement

29. (1) If an employer has employees to whom an approved entry-level training arrangement applies at any time in a year, the employer may elect that this section applies to the year.

(2) If the employer makes an election, the portion of the employer's net eligible training expenditure in the year attributable to each employee to whom the training arrangement applies is (instead of the amount that would, apart from this section, be attributable to the employee under this Part):

- (a) if the training arrangement applies to the employee for the whole of the year—the approved amount applicable to the training arrangement for the year; and
- (b) in any other case—the amount calculated, in relation to the employer and the year, using the formula:

$$\frac{N}{12} \times A$$

where:

A is the approved amount applicable to the training arrangement for the year; and

N is the number of months in the year in which, during the whole or a part of the year, the training arrangement applied to the employee.

Guidelines by Minister in relation to eligible training programs etc.

30. (1) The Minister may make guidelines, to be followed in the administration of this Act, in relation to the requirements to be satisfied in relation to a training program for the program to be an eligible training program and, in particular, requirements in relation to:

- (a) the objectives of training programs; and
- (b) the conditions set out in subsection 27 (2) (Meaning of structured training program); and
- (c) training programs that consist of or include on-the-job training.

(2) The Minister may also make guidelines, to be followed in the administration of this Act, in relation to:

- (a) the training arrangements that are approved entry-level training arrangements to which section 29 applies; and
- (b) the employees to whom such an approved entry-level training arrangement applies; and
- (c) the approved amount applicable to such an approved entry-level training arrangement.

(3) The Minister may make guidelines, to be followed in the administration of this Act, in relation to the records to be kept by employers for the purposes of this Act.

(4) Before making guidelines, the Minister is to take into consideration any relevant recommendation made to the Minister by the training advisory body.

(5) A guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Application of Part to training institutions

31. (1) In applying this Part to a training institution in its capacity as an employer, any expenditures, subsidies and reimbursements of the training institution that are not directly attributable solely or principally to employees of the training institution are to be disregarded.

(2) Subsection (1) does not apply to eligible training expenditure to which subsection 25 (3) applies.

(3) In this section:
“employee”, in relation to a training institution, includes a prescribed person.

PART 4—TRAINING GUARANTEE FUND

Establishment of Fund

32. (1) An account called the Training Guarantee Fund is established by this subsection.

(2) The Fund is a trust account for the purposes of section 62A of the *Audit Act 1901*.

Payments into Fund

33. There are to be paid into the Fund:

- (a) amounts paid to the Commonwealth under this Act (other than amounts paid in satisfaction or partial satisfaction of penalties imposed by courts); and
- (b) amounts paid to the Commonwealth for the purposes of the Fund; and

- (c) money appropriated by law for the purposes of the Fund; and
- (d) interest from the investment of money in the Fund.

Application of Fund

34. (1) Subject to this section, money in the Fund may be applied for the purposes of:

- (a) reimbursing the Commonwealth for:
 - (i) the costs of administering this Act during any period; and
 - (ii) costs incurred by the Commonwealth during any period in collecting, compiling, analysing and publishing information about the operation of this Act; and
- (b) making payments under training guarantee agreements; and
- (c) refunding any overpaid amounts under section 50 or any amounts paid into the Fund in error.

(2) For the purposes of paragraph (1) (a), the Minister for Finance may, from time to time, determine the amount of any reimbursement to be made to the Commonwealth in relation to a period on such basis as the Minister for Finance considers appropriate.

(3) If a training guarantee agreement is not in force in relation to a State or Territory and a period, the Minister may use, for furthering the objects of this Act, any amount that would, in the Minister's opinion, have been payable to the State or Territory in relation to the period if such an agreement were in force.

(4) If, under section 36 (Failure to comply with training guarantee agreement), an amount has been paid to the Commonwealth by a State or Territory, or an amount has been deducted from a payment to a State or Territory, the amount paid or deducted may be allocated to other States or Territories, or used for otherwise furthering the objects of this Act, as the Minister thinks appropriate.

Training guarantee agreements with States and Territories

35. (1) The Minister may make agreements with a State or Territory about making payments out of the Fund to the State or Territory and the expenditure of those payments, or amounts attributable to those payments, in relation to eligible training programs.

(2) An agreement is of no effect unless it includes clauses to the effect that the State or Territory:

- (a) supports the Training Guarantee Scheme; and
- (b) agrees:
 - (i) to distribute payments made to it under the agreement, or amounts attributable to those payments, on the advice of a specified tripartite body (that is, a body on which

the State or Territory, employers and trade unions are represented); and

(ii) to ensure that the payments, or amounts attributable to the payments, are expended only in relation to eligible training programs; and

(c) agrees not to reduce its current or future expenditure in relation to eligible training programs by substituting any payment made under the agreement for a payment out of its own funds.

(3) Subsection (2) does not limit the matters that may be dealt with in an agreement under this section.

Failure to comply with training guarantee agreement

36. (1) A payment made to a State or Territory under a training guarantee agreement is made on the condition that, if the Minister gives the State or Territory a notice to the effect that the Minister is satisfied that the State or Territory has contravened the agreement, the State or Territory will pay the Commonwealth the amount (if any) specified by the Minister (being an amount not exceeding the amount of the payment).

(2) If the Minister is satisfied that a State or Territory has not spent part or all of a payment made under a training guarantee agreement, or has spent part or all of the payment otherwise than in accordance with the agreement, then, instead of giving a notice under subsection (1), the Minister may deduct from any further payment to be made to the State or Territory under the agreement or a subsequent training guarantee agreement an amount or amounts not exceeding in total the amount that was not spent, or that was spent otherwise than in accordance with the agreement.

PART 5—ADMINISTRATION

General administration of Act

37. The Commissioner has the general administration of this Act.

Annual report and financial statements

38. (1) After the end of each year, the Commissioner must give the Treasurer a report on the working of this Act during the year for presentation to the Parliament, together with financial statements in relation to the operation of the Training Guarantee Fund during the year in such form as the Minister for Finance approves in writing.

(2) Financial statements and all records relating to those statements are to be subject to inspection, examination and audit by the Auditor-General.

Secrecy

39. (1) In this section:

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is or has been:

- (a) the Commissioner, a Second Commissioner or a Deputy Commissioner; or
- (b) the training advisory body; or
- (c) an officer or employee of:
 - (i) the branch of the Australian Public Service under the direct control of the Commissioner; or
 - (ii) the training advisory body; or
- (d) otherwise appointed or employed by, or a provider of services for, the Commonwealth;

“produce” includes permit access to;

“protected document” means a document that:

- (a) contains information that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to this Act;

“protected information” means information that:

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to this Act.

(2) Subject to subsection (3), a person to whom this section applies must not:

- (a) make a record of any protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person any protected information concerning another person;

unless the record is made, or the information divulged or communicated:

- (c) under or for the purposes of this Act; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to this Act.

Penalty: Imprisonment for 2 years.

(3) Subsection (2) does not prevent the Commissioner, a Second Commissioner or a Deputy Commissioner or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner from divulging or communicating any protected information:

- (a) to the training advisory body, or an officer or employee of the training advisory body, for the purposes of the administration of this Act; or

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(b) to a person performing, as a person to whom this section applies, duties under or in relation to an Act of which the Commissioner has the general administration, or under regulations made under such an Act, for the purpose of enabling the person to perform the duties.

(4) A person divulges or communicates protected information to a person in contravention of subsection (2) if the person divulges or communicates the information to any Minister.

(5) A person to whom this section applies is not required:

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a protected document in court;

except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(6) Nothing in an Act of which the Commissioner has the general administration is taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from divulging or communicating any information to a person performing, as a person to whom this section applies, duties under or in relation to this Act for the purpose of enabling the person to perform the duties.

(7) Nothing in an Act of which the Commissioner has the general administration is taken to prohibit the Commissioner, a Second Commissioner, a Deputy Commissioner, or a person authorised by the Commissioner, a Second Commissioner or a Deputy Commissioner, from:

- (a) divulging or communicating to a court any information obtained under or for the purposes of such an Act; or
- (b) producing in court a document obtained or made under or for the purposes of such an Act;

where it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

(8) A person to whom this section applies must, if and when required by the Commissioner, a Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in accordance with this section.

PART 6—TRAINING GUARANTEE STATEMENTS AND ASSESSMENTS

Division 1—Training guarantee statements

Annual training guarantee statements

40. (1) If an employer is liable to pay training guarantee charge for a year, the employer must lodge a training guarantee statement for the year on or before:

- (a) 30 September in the following year; or
- (b) any later day allowed by the Commissioner.

(2) Subsection (1) does not apply to the employer if the employer has previously lodged a training guarantee statement for the year under section 41.

Other training guarantee statements

41. Where the Commissioner, by written notice to a person, requires the person, whether an employer or not, to give the Commissioner a training guarantee statement for a year, the person must lodge the statement as required by the notice, whether or not the person has lodged, or is or was required to lodge a statement under section 40 or this section for the year.

Requirements for training guarantee statements

42. A training guarantee statement under section 40 or 41 must:

- (a) be in a form approved by the Commissioner for the purposes of the section concerned, being a form that deals with such matters as are prescribed in relation to the section for the purposes of this paragraph; and
- (b) be lodged in accordance with the regulations; and
- (c) be signed by or on behalf of the person giving the statement; and
- (d) specify:
 - (i) the employer's annual national payroll in the year concerned; and
 - (ii) the employer's minimum training requirement in the year; and
 - (iii) the employer's net eligible training expenditure in the year; and
 - (iv) the employer's training guarantee shortfall in the year; and
 - (v) the training guarantee charge payable on the shortfall; and
- (e) contain such other information as is required to complete the form.

Division 2—Training advisory certificates

Training advisory certificates given by registered industry training agent

43. (1) An employer may apply in writing to a registered industry training agent for a training advisory certificate stating:

- (a) that particular activities constitute an eligible training program;
or
- (b) that particular expenditure constitutes eligible training expenditure.

(2) The industry training agent must give the employer the certificate if satisfied that the activities constitute an eligible training program, or that the expenditure constitutes eligible training expenditure, as the case requires.

(3) If the training agent is not satisfied of those matters, the training agent must refuse to give a certificate and must notify the employer accordingly.

Training advisory certificate given by training advisory body

44. (1) The training advisory body may, of its own motion, give the Commissioner or a registered industry training agent a training advisory certificate stating whether or not particular activities constitute an eligible training program or particular expenditure constitutes eligible training expenditure.

(2) The training advisory body must give the Commissioner or a registered industry training agent a certificate of a kind referred to in subsection (1) if the Commissioner or the training agent requests it to do so.

(3) When the training advisory body gives the Commissioner or a registered industry training agent a certificate that directly affects a particular employer, the training advisory body must at the same time give a copy to the employer.

(4) When the training advisory body gives a registered industry training agent a certificate, the training advisory body must at the same time give a copy to the Commissioner.

Training advisory certificates binding on Commissioner

45. A training advisory certificate given to a particular employer is binding on the Commissioner for the purpose of making an assessment in relation to the employer for the first year in relation to which the certificate applies and the following year.

Division 3—Assessments

First training guarantee statement for year taken to be assessment

46. If:

- (a) an employer lodges a training guarantee statement for a year; and
- (b) a training guarantee statement has not previously been lodged, and an assessment has not previously been made, for the year in relation to the employer;

then:

- (c) the Commissioner is taken to have made an assessment of the employer's training guarantee shortfall for the year and of the training guarantee charge payable on the shortfall; and
- (d) the assessment is taken to have been made on 30 September in the following year or the day on which the statement was lodged, whichever is the later; and
- (e) the amounts of training guarantee shortfall and training guarantee charge specified in the statement are taken to be the respective amounts assessed in relation to the employer for the year; and
- (f) the statement has effect as if it were a notice of assessment signed by the Commissioner and given to the employer on the day on which the assessment is taken to have been made.

Default assessments

47. If:

- (a) an employer has not lodged a training guarantee statement for a year; and
- (b) the Commissioner is of the opinion that the employer is liable to pay training guarantee charge for the year;

the Commissioner may, whether during or after the end of the year, make an assessment of the employer's training guarantee shortfall for the year and of the training guarantee charge payable on the shortfall.

Assessments where Commissioner has insufficient information

48. (1) If the Commissioner does not have sufficient information to make an assessment of an employer's training guarantee shortfall in a year, the shortfall is taken, for the purposes of making an assessment, to be an amount that in the Commissioner's opinion might reasonably be expected to be the shortfall.

(2) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed when considering an objection to the assessment is taken to have been made, held or formed when the assessment was made.

Amendment of assessments

49. (1) The Commissioner may, subject to this section, at any time amend any assessment by making any alterations or additions that the Commissioner thinks necessary, whether or not training guarantee charge has been paid in relation to the assessment.

(2) Subject to this section, if there has been an avoidance of training guarantee charge, the Commissioner may:

- (a)** if the Commissioner is of the opinion that the avoidance of training guarantee charge is due to fraud or evasion—at any time; or
- (b)** in any other case—within 4 years from the day on which the assessment is made;

amend the assessment by making any alterations or additions that the Commissioner thinks necessary to correct the assessment.

(3) An amendment effecting a reduction in an employer's liability under an assessment is not effective unless it is made within 4 years from the day on which the assessment was made.

(4) If an assessment has, under this section, been amended in any particular, the Commissioner may, within 4 years from the day on which training guarantee charge became due and payable under the amended assessment, make, in or in relation to the particular, any further amendment in the assessment that, in the Commissioner's opinion, is necessary to effect such reduction in the employer's liability under the assessment as is just.

(5) If:

- (a)** an employer applies for an amendment of the employer's assessment within 4 years from the day that training guarantee charge became due and payable under the assessment; and
- (b)** within that period, the employer lodges all information the Commissioner needs to decide the application;

the Commissioner may amend the assessment when considering the application, even if that period has elapsed.

(6) Nothing in this section prevents the amendment of an assessment to give effect to:

- (a)** the decision on any review or appeal; or
- (b)** its amendment by reduction of any particular following the employer's objection or pending any review or appeal.

Refund of overpaid amounts

50. (1) If, because an assessment is amended, a person's liability to training guarantee charge is reduced:

- (a)** the amount by which the training guarantee charge is reduced

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is taken, for the purposes of section 75, never to have been payable; and

(b) the Commissioner must:

- (i) refund any overpaid amount; or
- (ii) apply any overpaid amount against the person's liability (if any) to the Commonwealth and refund any part of the amount that is not so applied.

(2) In subsection (1):

“overpaid amount” includes any overpaid amount of additional training guarantee charge under section 75 or Part 9.

Amended assessment to be an assessment

51. Except as otherwise expressly provided in this Act, an amended assessment is taken to be an assessment for all the purposes of this Act.

Notice of assessment

52. As soon as practicable after an assessment is made, the Commissioner must give written notice of the assessment to the person liable to pay the training guarantee charge.

Validity of assessment

53. The validity of an assessment is not affected because any provision of this Act has not been complied with.

PART 7—OBJECTIONS, REVIEWS AND APPEALS

Division 1—Objections to and review of assessments

Objections

54. (1) An employer who is dissatisfied with an assessment, may, within 60 days after being given notice of the assessment, lodge a written objection to the assessment stating fully and in detail the grounds on which the employer relies.

(2) The Commissioner must consider the objection, and may either disallow it or allow all or part of it.

(3) The Commissioner must give written notice of the decision to the employer.

(4) If an assessment has been amended in any particular, an employer's right to object to the amended assessment is limited to a right to object to alterations or additions in relation to, or matters relating to, the particular.

(5) If a notice of assessment of training guarantee charge incorporates notice of one or more assessments of additional training guarantee

charge, the assessments are, for the purposes of this Part, to be treated as one assessment.

Request for referral

55. An employer who is dissatisfied with a decision under section 54 may, within 60 days of being given notice of the decision, lodge:

- (a) a written request to refer the decision to the Tribunal; or
- (b) a written request to refer the decision to the Federal Court.

Applications for extension of time

56. (1) Even if the period for an employer to lodge an objection to an assessment has ended, the employer may lodge the objection with a written application requesting the Commissioner to treat the objection as having been duly lodged.

(2) Even if the period for an employer to lodge a request under section 55 has ended, the employer may lodge the request with a written application asking that the request be treated as having been duly lodged.

(3) An application under subsection (1) or (2) must state fully and in detail the circumstances concerning, and the reasons for, the employer's failure to lodge the objection or request as required by this Act.

Consideration of applications for extension of time for lodging objections

57. (1) The Commissioner must consider each application made under subsection 56 (1) and may grant or refuse the application.

(2) The Commissioner must give written notice of the Commissioner's decision on the application to the employer concerned.

(3) An employer who is dissatisfied with a decision under subsection (1) may apply to the Tribunal for review of the decision.

(4) If an application under subsection 56 (1) has been granted, the employer who made the application is, for the purposes of this Part, to be treated as having duly lodged the objection to which the application relates.

Consideration of applications for extension of time for lodging requests for referral

58. (1) If the Commissioner receives an application under subsection 56 (2), the Commissioner must, as soon as practicable:

- (a) if the application relates to a request to refer a decision to the Tribunal—send the application to the Tribunal; or
- (b) if the application relates to a request to refer a decision to the Federal Court—send the application to the Federal Court.

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(2) The sending of an application to the Tribunal under paragraph (1) (a) is, for the purposes of the *Administrative Appeals Tribunal Act 1975*, taken to constitute the making of an application by the employer concerned to the Tribunal to extend the time within which the request may be lodged.

(3) The sending of an application to the Federal Court under paragraph (1) (b) constitutes the making of an application by the employer concerned to the Federal Court to extend the time within which the request may be lodged.

(4) The Tribunal or the Federal Court, as the case requires, may grant or refuse the application.

(5) If an application under subsection 56 (2) has been granted, the employer is, for the purposes of this Part, to be treated as having duly lodged the request to which the application relates.

Referral to Tribunal or Federal Court

59. (1) If an employer duly lodges a request under section 55, the Commissioner must comply with the request.

(2) The referral to the Tribunal of a decision on an objection is, for the purposes of the *Administrative Appeals Tribunal Act 1975*, taken to be the making of an application by the employer to the Tribunal for review of the decision.

(3) The referral of a decision on an objection to the Federal Court constitutes an appeal against the decision by the employer concerned.

Procedure on review or appeal

60. In proceedings under this Division on a review before the Tribunal or an appeal to a court:

- (a) the employer is, unless the Tribunal or court orders otherwise, limited to the grounds stated in the objection; and
- (b) the employer has the burden of proving that an assessment is excessive.

Division 2—Review of training advisory certificate decisions

Review of industry training agent's refusal to give training advisory certificate

61. (1) If a registered industry training agent refuses to give an employer a training advisory certificate, the employer may apply in writing to the training advisory body for a review of the training agent's decision.

(2) On considering the application, the training advisory body must give the employer a certificate stating whether or not the activities specified in the application constitute an eligible training program, or the expenditure specified in the application constitutes eligible training expenditure, as the case requires.

(3) The training advisory body must give the Commissioner a copy of the certificate.

Request for referral to Tribunal

62. (1) An employer who is dissatisfied with the effect of a training advisory certificate given by the training advisory body under section 44 or 61 may, within 60 days of being given the certificate or a copy of it (as required by the section concerned), lodge a written request to refer the matter to the Tribunal.

(2) A request must state fully and in detail the grounds on which the employer relies.

Applications for extension of time

63. (1) Even if the period for an employer to lodge a request under section 62 has ended, the employer may lodge the request with a written application asking that the request be treated as having been duly lodged.

(2) An application must state fully and in detail the circumstances concerning, and the reasons for, the employer's failure to lodge the request as required by this Act.

Consideration of applications for extension of time

64. (1) If the Commissioner receives an application under section 63, the Commissioner must, as soon as practicable, send the application to the Tribunal.

(2) The sending of an application to the Tribunal under subsection (1) is, for the purposes of the *Administrative Appeals Tribunal Act 1975*, taken to constitute the making of an application by the employer concerned to the Tribunal to extend the time within which the request may be lodged.

(3) The Tribunal may grant or refuse the application.

(4) If an application under section 63 has been granted, the employer is, for the purposes of this Part, to be treated as having duly lodged the request to which the application relates.

Referral to Tribunal

65. (1) If an employer duly lodges a request under section 62, the Commissioner must comply with the request.

(2) The referral of the matter to the Tribunal is, for the purposes of the *Administrative Appeals Tribunal Act 1975*, taken to be the making of an application by the employer to the Tribunal for review of the decision.

Procedure on review

66. In proceedings under this Division in relation to the referral of a matter to the Tribunal, the employer is limited to the grounds stated in the request for referral made under section 62.

Division 3—Review or appeal generally

Notice to refer

67. (1) Subject to subsections (2) and (3), if the Commissioner does not comply with a request under section 55 or 62 within 60 days after receiving it, the employer may give written notice to the Commissioner requiring the Commissioner to do so and the Commissioner must, within 60 days after receiving the notice, comply with the request.

(2) If an application under subsection 56 (2) or section 63 has been granted, the employer is not entitled to give notice until 60 days after the day on which the application was granted.

(3) If, within 60 days after receiving a request under section 55 or 62, or in a case to which subsection (2) applies, within 60 days after an application under subsection 56 (2) or section 63, has been granted, the Commissioner, by written notice given to the employer, requires the employer to give information relating to the request or application, the Commissioner is not required to comply with the request until 60 days after the Commissioner receives the information.

Powers of Federal Court on appeal

68. If the Federal Court hears an appeal under this Part, the Federal Court may make any order relating to the appeal that it thinks fit, including an order confirming or varying the decision or the effect of a training advisory certificate.

Implementation of decisions

69. (1) When a decision of the Tribunal or a court under this Part becomes final, the Commissioner must, not later than 60 days after the decision becomes final, take such action, including amending the assessment concerned, that may be necessary to give effect to the decision.

(2) For the purposes of determining when a decision made by the Tribunal or the Federal Court becomes final:

- (a) if the decision is made by the Tribunal, or by the Federal Court constituted by a single judge, and no appeal is lodged within the period for lodging an appeal—the decision becomes final at the end of that period; or
- (b) if the decision is made by the Full Court of the Federal Court, and an application is not made for special leave to appeal to the High Court within the period of 30 days after the decision—the decision becomes final at the end of that period.

Pending review or appeal not to affect assessment

70. The fact that a review or appeal is pending in relation to an assessment or a training advisory certificate does not, in the meantime, interfere with or affect, the assessment, an assessment in relation to the certificate or the effect of the certificate, and training guarantee charge, or additional training guarantee charge under section 75 or Part 9, may be recovered as if no review or appeal were pending.

PART 8—COLLECTION AND RECOVERY OF CHARGE

When training guarantee charge becomes due and payable

71. Training guarantee charge for a year becomes due and payable:
- (a) if the employer lodges a training guarantee statement on or before 30 September in the following year—on that day; or
 - (b) if the employer lodges a training guarantee statement after that day—on the day on which the statement is lodged.

When additional training guarantee charge becomes due and payable

72. Additional training guarantee charge under Part 9 becomes due and payable on the day specified for the purpose in the notice of assessment of the additional charge.

Employer leaving Australia

73. (1) If the Commissioner believes that an employer liable to pay training guarantee charge may leave Australia before the day on which the training guarantee charge would, but for this section, be due and payable, the training guarantee charge is due and payable on such day as the Commissioner notifies to that employer.

(2) In subsection (1):

“**training guarantee charge**” includes additional training guarantee charge under Part 9.

Extension of time and payment by instalments

74. (1) The Commissioner may, in such circumstances as the Commissioner thinks fit, extend the time for payment of an amount of training guarantee charge for such period as the Commissioner determines, and, if the Commissioner does so, the training guarantee charge is due and payable accordingly.

(2) The Commissioner may, in such circumstances as the Commissioner thinks fit, permit the payment of an amount of training guarantee charge to be made by instalments in such amounts and at such times as the Commissioner determines, and, subject to subsection (3), each instalment is due and payable at the time determined in relation to that instalment.

(3) If:

- (a) the Commissioner permits the payment of an amount of training guarantee charge to be made by instalments; and
- (b) an instalment is not paid on or before the time due for payment of the instalment;

the whole of the amount outstanding becomes due and payable at that time.

(4) In this section:

“training guarantee charge” includes additional training guarantee charge payable under section 75 or Part 9.

Penalty for unpaid training guarantee charge

75. (1) Subject to this section, if any training guarantee charge remains unpaid after the time when it became due and payable, or would, but for section 74, have become due and payable, additional training guarantee charge is due and payable, by way of penalty, by the employer liable to pay the training guarantee charge at the rate of 20% per annum on the amount unpaid, calculated from that time or where, under section 74, the Commissioner has granted an extension of time for payment of the training guarantee charge or has permitted payment of the training guarantee charge to be made by instalments, from the day the Commissioner determines, not being a day before the day on which the training guarantee charge was originally due and payable.

(2) If:

- (a) the Commissioner amends an assessment (in this subsection called the **“former assessment”**) in relation to an employer and to a year; and
- (b) the training guarantee charge payable under the amended assessment exceeds the training guarantee charge payable under the former assessment; and
- (c) the whole or a part (which whole or part is in this subsection called the **“non-penalised amount”**) of the excess referred to in paragraph (b) relates to a matter in relation to which the employer is not liable (otherwise than because of subsection 8ZE (1) of the *Taxation Administration Act 1953* or subsection 87 (3) of this Act) to pay additional training guarantee charge under Part 9 (except section 84) of this Act;

the additional training guarantee charge under subsection (1), so far as it:

- (d) would relate to so much of the unpaid amount referred to in subsection (1) as is attributable to the non-penalised amount; and
- (e) would be calculated in relation to the period:
 - (i) commencing on:
 - (A) the day on which training guarantee charge would,

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but for section 74, have become due and payable by the employer in relation to the year; or

(B) the original assessment date;

whichever is the later; and

(ii) ending on the 30th day after the day on which the amended assessment was made;

is to be calculated as if the reference in subsection (1) to 20% per annum were a reference to the rate of interest that is applicable under regulations made for the purposes of paragraph 10 (1) (b) of the *Taxation (Interest on Overpayments) Act 1983*.

(3) Until regulations are made for the purposes of paragraph 10 (1) (b) of the *Taxation (Interest on Overpayments) Act 1983*, the rate of interest applicable for the purposes of subsection (2) is 14.026% per annum.

(4) If additional training guarantee charge is due and payable by an employer under this section in relation to an amount of training guarantee charge and:

(a) the Commissioner is satisfied that:

(i) the circumstances that contributed to the delay in payment of the training guarantee charge were not due to, or caused directly or indirectly by, an act or omission of the employer; and

(ii) the employer has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or

(b) the Commissioner is satisfied that:

(i) the circumstances that contributed to the delay in payment of the training guarantee charge were due to, or caused directly or indirectly by, an act or omission of the employer; and

(ii) the employer has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and

(iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional training guarantee charge or part of the additional training guarantee charge; or

(c) the Commissioner is satisfied that there are special circumstances because of which it would be fair and reasonable to remit the additional training guarantee charge or part of the additional training guarantee charge;

the Commissioner may remit the additional training guarantee charge or part of the additional training guarantee charge.

(5) Where judgment is given by, or entered in, a court for payment of:

(a) an amount of training guarantee charge; or

(b) an amount that includes an amount of training guarantee charge;
then:

(c) the training guarantee charge is not taken, for the purposes of subsection (1), to have ceased to be due and payable merely because of the giving or entering of the judgment; and

(d) if the judgment debt carries interest, the additional training guarantee charge that would, but for this paragraph, be payable under this section in relation to the training guarantee charge is to be reduced by:

(i) in a case to which paragraph (a) applies—the amount of the interest; or

(ii) in a case to which paragraph (b) applies—an amount that bears the same proportion to the amount of the interest as the amount of the training guarantee charge bears to the amount of the judgment debt.

(6) In this section, unless the contrary intention appears:

“**training guarantee charge**” includes additional training guarantee charge under Part 9.

Recovery of training guarantee charge

76. (1) Training guarantee charge when it becomes due and payable:

(a) is a debt due to the Commonwealth and payable to the Commissioner in the manner and at the place prescribed; and

(b) may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.

(2) In subsection (1):

“**training guarantee charge**” includes additional training guarantee charge under section 75 or Part 9.

Substituted service

77. If:

(a) a document is required to be served on an employer for the purposes of proceedings against the employer for the recovery of training guarantee charge; and

(b) the Commissioner is satisfied, after reasonable enquiry, that the employer:

(i) is absent from Australia and has no attorney or agent in Australia on whom service of process can be effected; or

(ii) cannot be found;

service of the document on the employer may be effected, without leave of the court, by posting the document or a sealed copy of it in a letter addressed to the employer at his or her last known place of business or residence in Australia.

Liquidators

78. (1) If a person (in this section called the “asset holder”):

- (a) becomes, on a particular day, a liquidator of an employer that is a company; or
- (b) is a receiver, or a receiver and manager, for debenture holders of an employer that is a company, and, on a particular day, takes possession of assets of the employer;

the asset holder must, within 14 days of that day give written notice of the fact to the Commissioner.

(2) The Commissioner must, as soon as practicable, give the asset holder written notice of the amount that, in the Commissioner’s opinion, is sufficient to provide for any amount of training guarantee charge that is or may become payable by the employer (in this section called the “notified charge amount”).

(3) The asset holder:

- (a) must not, without the Commissioner’s permission, part with any of the company’s assets before receiving notice of the notified amount; and
- (b) must set aside, out of the assets available for paying the company’s ordinary debts, assets having the value calculated using the formula:

$$\begin{array}{l}
 \text{value of} \\
 \text{assets to} \\
 \text{be set} \\
 \text{aside}
 \end{array}
 =
 \begin{array}{l}
 \text{total value} \\
 \text{of assets} \\
 \text{available} \\
 \text{to pay} \\
 \text{ordinary} \\
 \text{debts}
 \end{array}
 \times
 \left[\begin{array}{l}
 \text{notified} \\
 \text{charge} \\
 \text{amount}
 \end{array}
 +
 \begin{array}{l}
 \text{company's} \\
 \text{notified} \\
 \text{tax} \\
 \text{amount}
 \end{array}
 +
 \begin{array}{l}
 \text{sum of} \\
 \text{company's} \\
 \text{other} \\
 \text{ordinary} \\
 \text{debts}
 \end{array}
 \right]$$

(4) The asset holder is liable as trustee to pay the training guarantee charge payable by the company for the year to the extent of the value of the assets that the asset holder is required to set aside.

(5) Paragraph (3) (a) does not prevent the asset holder from parting with the company’s assets to pay the company’s debts that are not ordinary debts.

(6) For the purposes of subsections (3) and (5), a company’s debt is an ordinary debt if:

- (a) it is unsecured; and
- (b) it is not required, under a Commonwealth, State or Territory law, to be paid in priority to some or all of the company’s other debts.

(7) If the asset holder, without reasonable excuse, contravenes this section or refuses or fails as trustee duly to pay the training guarantee

charge for which the asset holder is liable under subsection (3), the asset holder:

- (a) is personally liable to pay the training guarantee charge to the extent of the value of the assets that the asset holder is required to set aside under subsection (3); and
- (b) is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.

(8) This section is not taken to limit an obligation or liability of the asset holder arising otherwise than under this section.

(9) If 2 or more persons are asset holders of a particular company, or are asset holders for debenture holders of a particular company, the obligations and liabilities imposed on an asset holder by this section are imposed on both or all of the persons jointly.

(10) In this section, unless the contrary intention appears:

“notified tax amount”, in relation to a company, means an amount of which the company or the respective asset holder has been notified under a prescribed tax provision;

“prescribed tax provision” means:

- (a) subsection 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*; or
- (b) subsection 215 (2) of the *Income Tax Assessment Act 1936* or of that subsection as applied by the *Taxation (Unpaid Company Tax) Assessment Act 1982* or the *Trust Recoupment Tax Assessment Act 1985*; or
- (c) subsection 32 (2) of the *Sales Tax Assessment Act (No. 1) 1930* or of that subsection as applied by any other Act providing for the assessment of sales tax; or
- (d) subsection 30 (2) of the *Pay-roll Tax (Territories) Assessment Act 1971*; or
- (e) subsection 88 (2) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or
- (f) subsection 27 (2) of the *Tobacco Charges Assessment Act 1955*; or
- (g) subsection 47 (2) of the *Wool Tax (Administration) Act 1964*;

“training guarantee charge” includes additional training guarantee charge under section 75 or Part 9.

Recovery of training guarantee charge from trustee of deceased employer

79. (1) This section applies, if at the time of an employer’s death:

- (a) the employer has not paid the whole of any training guarantee charge incurred by the employer before the employer’s death;
- or

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(b) additional training guarantee charge under Part 9 for which the employer is liable has not been assessed or paid.

(2) The Commissioner has the same powers and remedies for the assessment and recovery of training guarantee charge from a trustee of the estate of the employer as the Commissioner would have had against the employer if the employer were still living.

(3) The trustee must:

(a) lodge any statements or information that the employer was, or would but for the employer's death have been, liable to lodge; and

(b) lodge any other statements or information that the Commissioner requires.

(4) If the trustee is unable or refuses or fails to lodge a statement in relation to a year, the Commissioner may assess:

(a) the employer's training guarantee charge shortfall for the year; and

(b) the amount of training guarantee charge payable on the shortfall.

(5) The trustee is subject to additional training guarantee charge under section 75 or Part 9 to the same extent as the employer would be if the employer were still living.

(6) The amount of any training guarantee charge payable by the trustee is a charge on all of the employer's estate in the trustee's hands in priority to any other encumbrance (except a charge in relation to a debt payable to the Commissioner).

(7) In this section, unless the contrary intention appears:

"training guarantee charge" includes additional training guarantee charge under section 75 or Part 9.

Recovery of charge from unadministered deceased estates

80. (1) If, within 6 months after the death of an employer, neither probate of the employer's will nor letters of administration of the employer's estate have been granted, the Commissioner may assess:

(a) the training guarantee shortfall on which training guarantee charge was payable by the employer at the time of his or her death; and

(b) the amount of training guarantee charge payable on the shortfall.

(2) If the employer resided in a State or Territory immediately before his or her death, the Commissioner must publish notice of the assessment twice in a daily newspaper circulating in the State or Territory.

(3) A person who claims an interest in the deceased employer's estate may, within 60 days after the first publication of notice of the

assessment, lodge a written objection to the assessment stating fully and in detail the grounds on which the person relies.

(4) Subject to any amendment, the assessment is conclusive evidence of the liability of the deceased employer.

(5) The Commissioner may, by order in the prescribed form, authorise a member or special member of the Australian Federal Police or a member of the police force of a State or Territory or any other person specified in the order, to levy the amount of training guarantee charge assessed, with costs, by distress and sale of any property of the estate.

(6) An authorised person has power to levy, as prescribed, the amount specified in the order.

(7) Despite subsections (4), (5) and (6), if probate of the will, or letters of administration of the estate, of the deceased employer are granted to a person on a particular day, the person may, within 60 days after that day, lodge an objection to the assessment, stating fully and in detail the grounds on which the person relies.

(8) Part 7 applies to an objection made by a person under subsection (3) or (7) as if the person were the deceased employer.

(9) In this section:

“training guarantee charge” includes additional training guarantee charge payable under section 75 or Part 9.

Commissioner may collect training guarantee charge from person owing money to person liable to training guarantee charge

81. (1) The Commissioner may, by written notice, require a person (in this section called the **“debtor”**):

- (a) who owes, or may subsequently owe, money to an employer; or
- (b) who holds, or may subsequently hold, money for or on account of an employer, or for or on account of another person for payment to an employer; or
- (c) who has, or may subsequently have, authority from another person to pay money to an employer;

to pay to the Commissioner, at or before a time (in this section called the **“payment time”**) specified in the notice (not being a time before the notice is served on the debtor, or before the money becomes due or is held, or the debtor has the authority, as the case may be) an amount (in this section called the **“garnisheed amount”**) equal to:

- (d) the whole of the money, or so much of it as is sufficient to pay the amount of training guarantee charge by the employer, whichever is the lesser; or
- (e) the amount specified in the notice out of each payment that the debtor makes or becomes liable to make to the employer, until the amount of training guarantee charge is paid.

(2) The Commissioner may, by further written notice, revoke or vary a notice under subsection (1).

(3) The Commissioner must arrange for a notice under subsection (1) or (2) to be given to the debtor and a copy of the notice to be given to the employer.

(4) A person who contravenes a notice under this section is guilty of an offence.

Penalty: \$1,000.

(5) If a person (in this subsection called the “**convicted person**”) is convicted of an offence against subsection (4) in relation to the contravention of the notice by the convicted person or another person, the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding the amount or the sum of the amounts, as the case requires, that the convicted person or the other person, as the case may be, refused or failed to pay to the Commissioner in accordance with the notice.

(6) A person making a payment under this section is taken to be acting with the authority of the employer and of all other persons concerned and is indemnified in relation to the payment.

(7) If any payment in relation to the amount due by the employer is made before payment is made by a person under a notice under this section, the Commissioner must immediately give notice to the person under subsection (2).

(8) The garnisheed amount is, from the payment time, a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.

(9) If:

- (a) money has been paid by a person to a building society in relation to the issue of shares in the capital of the society (not being shares listed for quotation on a Stock Exchange); and
- (b) the money has not been repaid;

the money is taken:

- (c) if the money is repayable on demand—to be due by the building society to the person; or
- (d) in any other case—to be money that may become due by the building society to the person.

(10) If, but for this subsection, a debt is not due, or repayable on demand, to a person unless a condition is fulfilled, the debt is taken, for the purposes of this section, to be due, or repayable on demand, as the case may be, to the person despite the fact that the condition has not been fulfilled.

(11) A notice may be given to the Commonwealth, a State or Territory by giving it to a person employed by the Commonwealth, State or Territory, respectively, being a person who, under a law of the Commonwealth, State or Territory, has a duty of disbursing public money, and a notice so given is taken, for the purposes of this section, to have been given to the Commonwealth, the State or the Territory, as the case may be.

(12) In this section:

“**building society**” means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory;

“**training guarantee charge**” includes:

- (a) additional training guarantee charge under section 75 or Part 9; and
- (b) a judgment debt or costs in relation to:
 - (i) training guarantee charge; or
 - (ii) additional training guarantee charge under section 75 or Part 9; and
- (c) a fine or costs imposed by a court in relation to an offence against this Act; and
- (d) an amount ordered by a court, on the conviction of a person for an offence against this Act, to be paid by the person to the Commissioner.

Public officer of company

82. (1) The person who is, from time to time, the public officer of a company for the purposes of the *Income Tax Assessment Act 1936* is the public officer of the company for the purposes of this Act, and the public officer’s address for service under that Act is the public officer’s address for service under this Act.

(2) Service of a notice or other document at the public officer’s address for service, or on the public officer, is sufficient service on the company for the purposes of this Act, but, if at any time there is no public officer of the company, service on a person acting or appearing to act in the business of the company is sufficient.

(3) The public officer is answerable for doing all acts required to be done by the company under this Act, and in case of default is liable to the same penalties.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the company.

(5) If, at any time, there is no public officer of the company, this Act applies in relation to the company as if there were no requirement to appoint a public officer of the company.

(6) A proceeding under this Act brought against the public officer is taken to have been brought against the company, and the company is liable jointly with the public officer for any penalty imposed on the public officer.

(7) Despite subsections (1) to (6) (inclusive) and without affecting any of the public officer's obligations and liabilities, a notice, process or proceeding that under this Act may be given to, served on or brought against the company or public officer may, if the Commissioner thinks fit, be given to, served on or brought against any director, secretary or other officer of the company or any attorney or agent of the company, and the director, secretary, officer, attorney or agent has the same liability in relation to the notice, process or proceeding as the company or public officer would have had if it had been given to, served on or brought against the company or public officer.

Public officer of trust estate

83. (1) The person who is, from time to time, the public officer of a trust estate for the purposes of section 252A of the *Income Tax Assessment Act 1936* is the public officer of the trust estate for the purposes of this Act, and the public officer's address for service under that Act is the public officer's address for service under this Act.

(2) Service of a notice or other document at the public officer's address for service, or on the public officer, is sufficient service on the trustee of the trust estate for the purposes of this Act, but, if at any time there is no public officer of the trust estate, service on a person acting or appearing to act in the business of the trust estate is sufficient.

(3) The public officer is answerable for doing all acts required to be done by the trustee of the trust estate under this Act, and in case of default is liable to the same penalties.

(4) Everything done by the public officer that the public officer is required to do in that capacity is taken to have been done by the trustee of the trust estate.

(5) If, at any time, there is no public officer of the trust estate, this Act applies in relation to the trustee of the trust estate as if there were no requirement to appoint a public officer of the trust estate.

(6) A proceeding under this Act brought against the public officer is taken to have been brought against the trustee of the trust estate, and the trustee is liable jointly with the public officer for any penalty imposed on the public officer.

(7) Despite subsections (1) to (6) (inclusive) and without affecting any of the public officer's obligations and liabilities, a notice, process or proceeding that under this Act may be given to, served on or brought against the trustee or public officer of the trust estate may, if the Commissioner thinks fit, be given to, served on or brought against any

agent or attorney of the trustee, and the agent or attorney has the same liability in relation to the notice, process or proceeding as the trustee or public officer would have had if it had been given to, served on or brought against the trustee or public officer.

PART 9—PENALTY CHARGE

Failure to provide statements or information

84. (1) If an employer other than a government body refuses or fails to provide, when and as required under this Act, a training guarantee statement or information relevant to assessing the employer's liability to pay training guarantee charge for a year, the employer is liable to pay, by way of penalty, additional training guarantee charge equal to double the amount of training guarantee charge payable by the employer for the year.

(2) If an employer liable to pay training guarantee charge in relation to a year:

(a) fails to keep a record in relation to the year containing details of the basis of calculation of the following amounts:

- (i)** the employer's annual national payroll in the year;
- (ii)** the employer's minimum training requirement in the year;
- (iii)** the employer's net eligible training expenditure in the year;
- (iv)** the employer's training guarantee shortfall in the year;

that were specified in a training guarantee statement under section 40 or 41; or

(b) refuses or fails to produce to the Commissioner, when and as required by the Commissioner under this Act, a document containing details of the basis of calculation of the amounts referred to in paragraph (2) (a) that were specified in a training guarantee statement under section 40 or 41;

the employer is liable to pay, by way of penalty, additional training guarantee charge equal to double the amount of training guarantee charge payable by the employer for the year.

(3) If the amount of additional training guarantee charge that would, but for this subsection, be payable under subsection (1) or (2) is less than \$20, the additional training guarantee charge payable is \$20.

False or misleading statements

85. (1) If:

(a) an employer other than a government body:

- (i)** makes a statement that is false or misleading in a material particular to:

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- (A) a taxation officer; or
 - (B) a person other than a taxation officer for a purpose connected with this Act; or
 - (ii) omits from a statement made to:
 - (A) a taxation officer; or
 - (B) a person other than a taxation officer for a purpose connected with this Act;anything without which the statement is misleading in a material particular; and
 - (b) the training guarantee charge properly payable by the employer exceeds the training guarantee charge that would have been payable by the employer if it were assessed on the basis that the statement were not false or misleading;
- the employer is liable to pay, by way of penalty, additional training guarantee charge equal to double the amount of the excess.

(2) If the amount of additional training guarantee charge that would, but for this subsection, be payable under subsection (1) is less than \$20, the additional training guarantee charge payable is \$20.

(3) A reference in this section to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device or in any other form and, for example, includes a statement:

- (a) made in an objection, statement or other document lodged, given or prepared, or purporting to be lodged, given or prepared under this Act; and
- (b) made in answer to a question asked of a person under this Act; and
- (c) made in any information provided, or purporting to be provided, under this Act; and
- (d) made in a document provided to a taxation officer otherwise than under this Act.

(4) A reference in this section to a statement made to a person other than a taxation officer for a purpose connected with this Act is a reference to a statement made orally, in writing, in a data processing device or in any other form and, for example, includes a statement:

- (a) made in an objection, statement or other document lodged with, given to or prepared for the person; and
- (b) made in answer to a question asked by the person; and
- (c) made in any information provided to the person.

Penalty training guarantee charge where arrangement to avoid training guarantee charge

86. If, under section 19, an employer is liable to pay an amount of training guarantee charge (in this section called the “**amount payable**”) that is greater than the amount that would have been payable if section 19 had not applied to the employer (in this section called the “**notional amount**”), the employer is also liable to pay, by way of penalty, additional training guarantee charge calculated using the formula:

$$\text{additional training guarantee charge} = 2 \times \left(\begin{array}{c} \text{amount} \\ \text{payable} \end{array} - \begin{array}{c} \text{notional} \\ \text{amount} \end{array} \right).$$

Assessment of additional training guarantee charge

87. (1) The Commissioner must make an assessment of the additional training guarantee charge payable by an employer under this Part and must, as soon as practicable after the assessment is made, give written notice of the assessment to the employer.

(2) Nothing in this Act is taken to prevent a notice from being incorporated in a notice of any other assessment made in relation to the employer under this Act.

(3) The Commissioner may remit all or part of the additional training guarantee charge payable by an employer under this Part, but, for the purposes of applying subsection 33 (1) of the *Acts Interpretation Act 1901*, to the power of remission conferred by this subsection, nothing in this Act is taken to prevent the exercise of the power at a time before an assessment is made of the additional training guarantee charge.

PART 10—REGISTRATION OF INDUSTRY TRAINING AGENTS

Interpretation

88. In this Part:

“**guidelines**” means guidelines made by the Minister under section 94.

Register of industry training agents

89. The training advisory body must keep a register of industry training agents.

Application for registration of industry training agent

90. (1) A person may apply to the training advisory body for registration as an industry training agent.

(2) The application must be:

(a) in writing; and

(b) made to the training advisory body in the form (if any) prescribed by the guidelines and in accordance with the guidelines.

Registration of industry training agents

91. (1) If:

- (a) a person properly applies under section 90 for registration as an industry training agent; and
- (b) the training advisory body is satisfied that the person is qualified under the guidelines to be registered as an industry training agent and that the guidelines do not require the application to be refused;

the training advisory body must register the person as an industry training agent by entering particulars of the person in the register of industry training agents.

(2) If the training advisory body is not satisfied, it must refuse the application, and notify the person in writing accordingly.

Registration subject to compliance with guidelines

92. The registration of a person as an industry training agent is subject to the condition that the person must comply with any guidelines made for the purposes of this section that are applicable to the person.

Cancellation of registration

93. (1) The training advisory body may cancel the registration of a person as an industry training agent if:

- (a) the training advisory body is satisfied that the person has contravened the condition to which the registration is subject; or
- (b) the training advisory body is empowered, under the guidelines, to cancel the registration.

(2) If the training advisory body cancels the registration of the person as an industry training agent, the training advisory body must immediately inform the person in writing of the cancellation.

Guidelines

94. (1) The Minister may make guidelines, not inconsistent with this Part, prescribing all matters:

- (a) required or permitted by this Part to be prescribed by the guidelines; or
- (b) necessary or convenient to be prescribed by the guidelines for carrying out or giving effect to this Part.

(2) Before making guidelines, the Minister is to take into consideration any relevant recommendation made to the Minister by the training advisory body.

(3) A guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Review of decisions

95. Application may be made to the Tribunal for review of decisions of the training advisory body made under this Part or the guidelines.

PART 11—MISCELLANEOUS

Judicial notice of signature

96. All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, are to take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner or Deputy Commissioner.

Evidence

97. (1) The mere production of:

- (a) a notice of assessment; or
- (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment;

is conclusive evidence of the due making of the assessment and, except in proceedings under Part 7 on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment are correct.

(2) The mere production of a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is *prima facie* evidence that the second-mentioned document was so issued or given.

(3) The mere production of a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, a training guarantee statement or a notice of assessment is evidence of the matter set out in the document to the same extent as the original statement or notice, as the case may be, would be if it were produced.

(4) The mere production of a certificate signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, on the day of the certificate, due and payable by a person in relation to an amount of training guarantee charge or by way of penalty under section 75 or Part 9, is *prima facie* evidence of the matters stated in the certificate.

(5) A training guarantee statement purporting to be made or signed by or on behalf of an employer is *prima facie* evidence that the statement was made by the employer or with the employer's authority.

Access to premises etc.

98. (1) For the purposes of this Act, an authorised officer:

- (a) may, at any reasonable time, enter and remain on any land or premises; and
- (b) is entitled to full and free access at any reasonable time to all documents; and
- (c) may inspect, examine, make copies of, or take extracts from, any documents.

(2) An authorised officer is not entitled to enter or remain on any land or premises if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce a written authority signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

(3) The occupier of land or premises entered or proposed to be entered by an authorised officer under subsection (1) must, for the purpose of enabling the effective exercise of the officer's powers under this section, provide the officer with all reasonable facilities and assistance that the occupier is reasonably capable of providing.

Penalty for contravention of this subsection: \$1,000.

Obtaining information and evidence

99. (1) The Commissioner may, for the purposes of this Act, by written notice, require a person:

- (a) to give to the Commissioner, within a reasonable period, and in a reasonable manner, specified in the notice any information that the Commissioner requires; and
- (b) to attend before the Commissioner, or an authorised officer, at a reasonable time and place specified in the notice, and then and there to answer questions; and
- (c) to produce to the Commissioner, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person.

(2) The Commissioner may require the information or answers to be verified or given on oath or affirmation, and either orally or in writing, and for that purpose the Commissioner or an authorised officer may administer an oath or affirmation.

(3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.

(4) The regulations must prescribe scales of expenses to be allowed to persons required to attend under this section.

Right of contribution

100. (1) If:

- (a) 2 or more persons are jointly and severally liable to pay an amount of training guarantee charge; and
- (b) one of them has paid the amount or part of it;

the person who paid may, in a court of competent jurisdiction, recover by way of contribution, and as a debt, from any of the other persons an amount equal to as much of the amount paid as the court considers just and equitable.

(2) In subsection (1):

“**training guarantee charge**” includes additional training guarantee charge under section 75 or Part 9.

Records to be kept and retained by employers

101. (1) An employer must keep records that record and explain all transactions and other acts engaged in by the employer, or required to be engaged in by the employer, under this Act.

(2) The records must include any documents relevant to ascertaining:

- (a) the employer’s annual national payroll in a year; and
- (b) the employer’s net eligible training expenditure in a year.

(3) The records must be kept:

- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) so that the employer’s liability under this Act can be readily ascertained.

(4) An employer who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is the later.

(5) Nothing in this section requires an employer to retain records if:

- (a) the Commissioner has notified the employer that the retention of the records is not required; or
- (b) the employer is a company that has gone into liquidation and been finally dissolved.

(6) Subsections (1), (2) and (3) have effect subject to any guidelines made under subsection 30 (3).

(7) An employer who, without reasonable excuse, contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding \$3,000.

Regulations

102. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of \$500 for offences against the regulations and prescribing fees not exceeding \$500 for the issue of training advisory certificates.

PART 12—AMENDMENTS OF CERTAIN ACTS IN RELATION TO THE TRAINING GUARANTEE CHARGE

Amendments

103. The Acts specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

Section 103

**AMENDMENTS OF CERTAIN ACTS IN RELATION
TO THE TRAINING GUARANTEE CHARGE**

Administrative Decisions (Judicial Review) Act 1977

Paragraph (e) of Schedule 1:

- (a) After “of tax” (wherever occurring) insert “, charge”.
- (b) After “*Taxation (Unpaid Company Tax) Assessment Act 1982*” insert “*Training Guarantee (Administration) Act 1990*”.

Crimes (Taxation Offences) Act 1980

Subsection 3 (1):

Insert the following definitions:

“**Training Guarantee (Administration) Act**’ means the *Training Guarantee (Administration) Act 1990*;

“**training guarantee charge**’ means charge imposed by the *Training Guarantee Act 1990*, as assessed under the *Training Guarantee (Administration) Act*, and includes additional training guarantee charge payable under section 75 or Part 9 of the *Training Guarantee (Administration) Act*;”.

Section 4:

Add at the end the following subsection:

“(3) Section 39 of the *Training Guarantee (Administration) Act* has effect as if this Act were part of that Act.”.

After Part V:

Add the following Part:

**“PART VI—OFFENCES RELATING TO TRAINING
GUARANTEE CHARGE**

Application of Parts I and II in relation to training guarantee charge

“16. (1) Without prejudice to their effect apart from this section, subsection 3 (3), paragraph 3 (4) (e) and the provisions of Part II (other than section 8 and subsection 10 (3)) also have the effect they would have if:

- (a) a reference in any of those provisions to sales tax were a reference to training guarantee charge; and
- (b) a reference in any of those provisions to future sales tax were a reference to future training guarantee charge; and

SCHEDULE—continued

- (c) a reference in any of those provisions to some one or other of the Sales Tax Assessment Acts were a reference to the Training Guarantee (Administration) Act; and
- (d) a reference in any of those provisions, in relation to a company or trustee, to sales tax moneys, were a reference to training guarantee charge moneys.

“(2) In applying the provisions of Part II (other than section 8 and subsection 10 (3)) in accordance with subsection (1):

- (a) a reference in any of those provisions to the training guarantee charge payable by a company or trustee, in relation to the purpose, or a purpose, of a person’s entering into, or a person’s knowledge or belief concerning, an arrangement or transaction is to be read as a reference to some or all of the training guarantee charge due and payable by the company or the trustee at the time when the arrangement or transaction was entered into; and
- (b) a reference in any of those provisions to future training guarantee charge payable by a company or trustee, in relation to the purpose, or a purpose, of a person’s entering into, or a person’s knowledge or belief concerning, an arrangement or transaction is to be read as a reference to some or all of the training guarantee charge that may reasonably be expected by that person to become payable by the company or trustee after the arrangement or transaction is entered into; and
- (c) a reference in any of those provisions (other than subsections 10 (1) and (2)), in relation to a company or trustee, to training guarantee charge moneys is to be read as a reference to:
 - (i) training guarantee charge payable by the company or trustee; and
 - (ii) costs ordered by a court against a company or trustee in a proceeding for the recovery of training guarantee charge; and
- (d) a reference in subsections 10 (1) and (2) to training guarantee charge moneys is to be read as a reference to training guarantee charge assessed under the Training Guarantee (Administration) Act.

“(3) In applying subsection 10 (2) and sections 11 and 12 in accordance with subsections (1) and (2), the liability of a company or trustee in respect of training guarantee charge moneys that have been assessed is not to be taken not to be finally determined merely because of the possibility of the Commissioner’s amending the assessment (otherwise than as a result of allowing an objection or to give effect to a decision of the Administrative Appeals Tribunal or a court).”

SCHEDULE—continued

Fringe Benefits Tax Assessment Act 1986

Subsection 96 (7):

Add at the end of paragraphs (a) to (ca) (inclusive) “or”.

After paragraph 96 (7) (d):

Insert the following paragraph:

“(da) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*; or”.

Income Tax Assessment Act 1936

Section 51:

Add at the end the following subsection:

“(7) A deduction is not allowable under subsection (1) in respect of charge imposed by the *Training Guarantee Act 1990*.”.

Paragraph 202 (a):

Add at the end “and”.

Paragraph 202 (c):

Add at the end the following word and paragraph:

“; and (d) to facilitate the administration of any legislation enacted by the Parliament to impose charge equal to any shortfall in the amount spent by employers on training employees.”.

Subsection 215 (3D):

Add at the end of paragraphs (aa) to (b) (inclusive) “or”.

After paragraph 215 (3D) (c):

Insert the following paragraph:

“(ca) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*; or”.

Pay-roll Tax (Territories) Assessment Act 1971

Subsection 30 (3C):

Add at the end of paragraphs (aa) to (b) (inclusive) “or”.

After paragraph 30 (3C) (c):

Insert the following paragraph:

“(ca) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*; or”.

SCHEDULE—continued

Petroleum Resource Rent Tax Assessment Act 1987

Subsection 88 (7):

Add at the end of paragraphs (a) to (d) (inclusive) “or”.

After paragraph 88 (7) (e):

Insert the following paragraph:

“(ea) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*; or”.

Sales Tax Assessment Act (No. 1) 1930

Subsection 32 (2D):

Add at the end of paragraphs (aa) to (c) (inclusive) “or”.

After paragraph 32 (2D) (d):

Insert the following paragraph:

“(da) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*; or”.

Taxation Administration Act 1953

Subsection 8J (2):

(a) Add at the end of paragraphs (a) to (c) (inclusive) “or”.

(b) Add at the end of paragraphs (f) to (p) (inclusive) “or”.

After paragraph 8J (2) (q):

Insert the following paragraph:

“(qa) paragraph 99 (1) (c) of the *Training Guarantee (Administration) Act 1990*; or”.

Paragraph 8WA (1) (b):

Insert “or (d)” after “paragraph 202 (c)”.

Paragraph 8WB (1) (d):

Insert “or (d)” after “paragraph 202 (c)”.

Paragraph 8WB (1) (e):

Insert “or (d)” after “paragraph 202 (c)”.

Subsection 8ZE (3):

Add at the end of paragraphs (a) to (g) (inclusive) “or”.

SCHEDULE—continued

After paragraph 8ZE (3) (h):

Insert the following paragraph:

“(ha) section 84 or 85 of the *Training Guarantee (Administration) Act 1990*; or”.

Section 14ZAB:

Add at the end the following subsection:

“(2) For the purposes of this Part, a decision of the training advisory body to issue a training advisory certificate under subsection 43 (2), 44 (1) or (2) or 61 (2) of the *Training Guarantee (Administration) Act 1990* is taken to be an objection decision, and that Act is taken to be a relevant enactment.”.

Section 14ZB:

Add at the end the following subsection:

“(2) For the purposes of this Part, a decision of the training advisory body to issue a training advisory certificate under subsection 43 (2), 44 (1) or (2) or 61 (2) of the *Training Guarantee (Administration) Act 1990* is taken to be an objection decision, and that Act is taken to be a relevant enactment.”.

Taxation (Interest on Overpayments) Act 1983

Subsection 3 (1) (paragraph (d) of the definition of “decision to which this Act applies”):

After “paragraph (ka)” insert “or (na)”.

Subsection 3 (1) (after paragraph (h) of the definition of “objection”):

Insert the following paragraph:

“(ha) subsection 54 (1) of the *Training Guarantee (Administration) Act 1990*,”.

Section 3:

Add at the end the following subsection:

“(4) For the purposes of this Act, a request under section 62 of the *Training Guarantee (Administration) Act 1990* is taken to be an objection.”.

Subsection 3 (1) (after paragraph (n) of the definition of “relevant tax”):

Insert the following paragraph:

“(na) charge within the meaning of the *Training Guarantee (Administration) Act 1990*,”.

SCHEDULE—continued

Tobacco Charges Assessment Act 1955

Subsection 27 (3C):

Add at the end of paragraphs (aa) to (ba) (inclusive) “or”.

After paragraph 27 (3C) (c):

Insert the following paragraph:

“(ca) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*; or”.

Wool Tax (Administration) Act 1964

Subsection 47 (3C):

(a) Add at the end of paragraphs (aa) to (ba) (inclusive) “or”.

(b) Add at the end the following word and paragraph:

“or; (da) notified charge amount within the meaning of section 78 of the *Training Guarantee (Administration) Act 1990*.”.

[*Minister's second reading speech made in—
House of Representatives on 16 May 1990
Senate on 30 May 1990*]