



Training Guarantee (Administration) Amendment Act 1991

No. 111 of 1991

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Training Guarantee (Administration) Amendment Act 1991

No. 111 of 1991

An Act to amend the *Training Guarantee (Administration) Act 1990*, and for related purposes

[Assented to 27 June 1991]

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the *Training Guarantee (Administration) Amendment Act 1991*.

(2) In this Act, “Principal Act” means the *Training Guarantee (Administration) Act 1990*¹.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Sections 12, 13, 14, 16 and 17 and subsections 19 (5) and (6) commence on the later of the following:

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- (a) 1 July 1991;
- (b) the day on which this Act receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended:

- (a) by adding at the end of the definition of “employee” the following word and paragraph:
“or (f) a person who is taken not to be an employee because of section 4A;”;
- (b) by omitting “and” from the end of paragraph (b) of the definition of “employer”;
- (c) by omitting paragraphs (c) and (d) of the definition of “employer”;
- (d) by omitting “the” from paragraph (e) of the definition of “person” and substituting “a particular”;
- (e) by inserting the following definitions:
“**Senior Executive Service office**’ has the same meaning as in the *Public Service Act 1922*;
‘**statutory fee upper limit**’ means:
 - (a) in relation to the year commencing on 1 July 1991—\$500; or
 - (b) in relation to a later year—the amount calculated by multiplying the statutory fee upper limit for the previous year by the indexation factor for the later year;”.

4. After section 4 of the Principal Act the following section is inserted:

Interpretation—meaning of “employee”— exclusion of persons covered by recognised alternative training levy schemes

“4A. (1) A person who, under the regulations, is taken to be covered by a recognised alternative training levy scheme is taken not to be an employee for the purposes of this Act.

“(2) Regulations made for the purposes of subsection (1) may provide for the following:

- (a) empowering the Minister to make decisions (in this section called ‘**approval-in-principle decisions**’) about the conditions that must be satisfied in relation to a particular scheme in order to qualify for:
 - (i) recognised alternative training levy scheme status for the scheme; and
 - (ii) recognition of coverage of persons by the scheme;
- (b) empowering the Minister to make decisions (in this section called ‘**scheme decisions**’) about:
 - (i) recognised alternative training levy scheme status; and

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- (ii) recognition of coverage of persons by schemes;
on either of the following bases:
 - (iii) the basis that the conditions specified in an approval-in-principle decision have been satisfied;
 - (iv) the basis that, because of special circumstances, even though the conditions specified in an approval-in-principle decision have not been satisfied, it is reasonable to recognise a scheme or the coverage of persons as if those conditions had been satisfied;
- (c) empowering the Minister to revoke scheme decisions;
- (d) empowering the Minister to delegate the Minister's power to make approval-in-principle decisions or to make or revoke scheme decisions to a person holding or performing the duties of a Senior Executive Service office in the Department;
- (e) the charging of fees for applications for approval-in-principle decisions or scheme decisions;
- (f) requiring applicants for scheme decisions to:
 - (i) obtain certificates about satisfaction of relevant conditions from persons specified in the regulations; and
 - (ii) cause those certificates to be given to the Minister;
- (g) requiring the managers of schemes to notify changed circumstances;
- (h) enabling employers to lodge training guarantee statements on the assumption that conditions specified in an approval-in-principle decision will be satisfied;
- (i) enabling the Commissioner to amend an assessment if such an assumption proves to be incorrect.

“(3) Subsection (2) does not limit the generality of subsection (1).

“(4) The powers conferred by this section do not limit the powers conferred by virtue of paragraph (e) of the definition of ‘employee’ in section 4.”.

5. After section 11 of the Principal Act the following sections are inserted:

Treatment of partnerships

“11A. (1) Subject to this section, this Act applies to a partnership as if the partnership were a person.

“(2) An obligation that, apart from this subsection, would be imposed by this Act on a person, being a partnership, is imposed on each partner, but may be discharged by any of the partners.

“(3) An amount that, apart from this subsection, would be payable under this Act by a person, being a partnership, is jointly and severally payable by the partners.

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“(4) Where, by virtue of the operation of subsection (1), an offence against this Act is taken to have been committed by a partnership, that offence is taken to have been committed by each of the partners.

“(5) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person:

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is taken to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is taken to have been committed.

“(6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

Treatment of unincorporated associations

“11B. (1) This section applies to an unincorporated association or body of persons (other than a partnership).

“(2) Subject to this section, this Act applies to an association or body as if the association or body were a person.

“(3) An obligation that, apart from this subsection, would be imposed by this Act on a person, being an association or body, is imposed on the controlling officer or officers of the association or body.

“(4) An amount that, apart from this subsection, would be payable under this Act by a person, being an association or body, is jointly and severally payable by the members of the association or body.

“(5) Where, by virtue of the operation of subsection (2), an offence against this Act is taken to have been committed by an association or body, that offence is taken to have been committed by the controlling officer or officers of the association or body.

“(6) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person:

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is taken to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is taken to have been committed.

“(7) A reference in this section to a controlling officer of an association or body is a reference to a person who has authority to determine, or who has control over:

- (a) the general conduct of the affairs of the association or body; or
- (b) the conduct of that part of the affairs of the association or body

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in relation to which the obligation arose, or the act or omission occurred, as the case may be.

“(8) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.”.

Election by members of business groups

6. Section 12 of the Principal Act is amended:

(a) by omitting paragraph (3)(b) and substituting the following paragraphs:

“(b) an obligation that, apart from this subsection, would be imposed by this Act on the members as if they were a single person during the year is imposed on each member, but may be discharged by any of the members; and

(c) an amount that, apart from this section, would be payable under this Act by the members as if they were a single person during the year is jointly and severally payable by the members; and

(d) where, by virtue of the operation of paragraph (a), an offence against this Act is taken to have been committed by the members, that offence is taken to have been committed by each of the members; and

(e) in a prosecution of a person for an offence by virtue of this subsection, it is a defence if the person proves that the person:

(i) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is taken to have been committed; and

(ii) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is taken to have been committed.”;

(b) by omitting subsection (4) and substituting the following subsections:

“(4) For the purposes of this section, a business group consists of any collection of 2 or more corporations each of which is related to each of the others.

“(5) For the purposes of this section, the question whether corporations are related to each other is to be determined in the same manner as the question whether corporations within the meaning of the *Companies Act 1981* are related to each other would be determined under that Act.

“(6) An election purporting to be made by a corporation under this section in relation to a year is of no effect if:

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- (a) another party to the election is, under regulations made for the purposes of section 18A, an eligible outstanding trainer in relation to that year or in relation to a 3-year period that includes that year; or
- (b) all of the following conditions are satisfied:
 - (i) the corporation has made an election in relation to that year, or in relation to a 3-year period that includes that year, under regulations made for the purposes of section 18A;
 - (ii) as a result of that election, the corporation and at least one other corporation are taken to be a single employer in relation to that year, or in relation to a 3-year period that includes that year, for the purposes of those regulations;
 - (iii) that single employer is, under those regulations, an eligible outstanding trainer in relation to that year or in relation to a 3-year period that includes that year.

“(7) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953*, in so far as that Part relates to this Act.

“(8) This section does not apply in relation to section 18A or regulations made for the purposes of section 18A.”.

Charge not payable unless employer has training guarantee shortfall etc.

7. Section 13 of the Principal Act is amended by adding at the end of subsection (2) the following paragraph:

“(d) section 18A (Exemption for outstanding trainers).”.

8. After section 18 of the Principal Act the following section is inserted:

Exemption for outstanding trainers

“18A. (1) Training guarantee charge is not payable by an employer for a year if, under the regulations, the employer is taken to be an eligible outstanding trainer for that year or for a 3-year period that includes that year.

“(2) Regulations made for the purposes of subsection (1) may provide for the following:

- (a) empowering the Minister or a person specified in the regulations to make decisions about eligible outstanding trainer status;
- (b) empowering the Minister or the person specified in the regulations, as the case requires, to revoke a decision covered by paragraph (a);

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- (c) empowering the Minister to delegate the Minister's power to make or revoke a decision covered by paragraph (a) to a person holding or performing the duties of a Senior Executive Service office in the Department;
- (d) the charging of fees for applications for eligible outstanding trainer status;
- (e) requiring applicants for eligible outstanding trainer status to:
 - (i) obtain certificates about compliance with relevant criteria from persons specified in the regulations; and
 - (ii) cause those certificates to be given to the Minister or other person making a decision covered by paragraph (a);
- (f) requiring employers who have been granted eligible outstanding trainer status to notify changed circumstances.

“(3) Subsection (2) does not limit the generality of subsection (1).

“(4) The regulations may provide for 2 or more corporations who are members of a business group within the meaning of section 12 to elect to have themselves treated as a single employer in relation to a year or in relation to a 3-year period for the purposes of this section.”.

Meaning of eligible training expenditure

9. Section 25 of the Principal Act is amended by adding at the end the following subsection:

“(5) An employer's eligible training expenditure does not include an amount paid by way of contribution or levy to a scheme if:

- (a) the scheme is taken to be a recognised alternative training levy scheme under regulations made for the purposes of section 4A; and
- (b) a person who, under those regulations, is taken to be covered by the scheme would, apart from section 4A, be an employee of the employer.”.

Meaning of eligible training program

10. Section 27 of the Principal Act is amended:

- (a) by omitting paragraph (1)(b) and substituting the following paragraphs:

- “(b) the sole or principal object of the program is to develop, maintain or improve employment related skills of employees or other persons; and
- (c) a significant object of the program is not recreation; and
- (d) a significant object of the program is not a matter that is not directed towards the development, maintenance or improvement of employment related skills of employees or other persons.”;

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- (b) by omitting from paragraph (2) (a) “or approved” and substituting “, or approved in advance,”;
- (c) by inserting after subsection (4) the following subsection:

“(4A) For the purposes of paragraph (1) (d), to the extent that a training program consists of on-the-job training, any productive activity that results from that on-the-job training is taken to be a matter that is directed towards the development, maintenance or improvement of employment related skills of employees or other persons.”;
- (d) by inserting in subsection (5) “or (d) or subsection (4A)” after “(1) (b)”.

Secrecy

11. Section 39 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) In spite of anything in section 101A, for the purposes only of this section, a registered industry training agent who provides services to an employer in relation to a training advisory certificate is taken to provide those services:

- (a) for the Commonwealth; and
- (b) in the course of performing duties under or in relation to this Act.”.

Training advisory certificates given by registered industry training agent

12. Section 43 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The industry training agent may charge the employer a fee for making the application.”.

Training advisory certificate given by training advisory body

13. Section 44 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) The training advisory body may charge the registered industry training agent a fee for making the request.”.

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

14. Section 61 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The training advisory body may charge the employer a fee for making the application.”.

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Cancellation of registration

15. Section 93 of the Principal Act is amended:

(a) by adding at the end of subsection (1) the following word and paragraph:

“; or (c) the person has contravened subsection 101A (5) or has otherwise engaged in conduct with the intention of defeating the object of that subsection.”;

(b) by inserting in subsection (2) “under subsection (1)” after “agent”;

(c) by adding at the end the following subsection:

“(3) The training advisory body must cancel the registration of a person as an industry training agent if the person requests the cancellation.”.

16. After section 101 of the Principal Act the following section is inserted:

Fees for training advisory certificates

“101A. (1) This section applies to a fee:

(a) charged by a registered industry training agent under subsection 43 (1A); or

(b) charged by the training advisory body under subsection 44 (2A) or 61 (1A).

“(2) A fee is paid to the agent or body in its own right and in its capacity as the direct provider of services to the person who made the application or request.

“(3) Accordingly, a fee is not paid to the agent or body in a capacity as agent for the Commonwealth.

“(4) A fee may be recovered by an agent or body as a debt due to the agent or body.

“(5) A fee for making an application or request must not exceed the statutory fee upper limit for the year in which the application or request was made.”.

Regulations

17. Section 102 of the Principal Act is amended by omitting “and prescribing fees not exceeding \$500 for the issue of training advisory certificates”.

Repeal of Part 12 and Schedule

18. (1) Part 12 of, and the Schedule to, the Principal Act are repealed.

(2) The repeals effected by subsection (1) do not affect the amendments made by Part 12 of the Principal Act.

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Application of amendments

19. (1) Subject to this section, the amendments made by paragraphs 3 (a), (b), (c) and (d) and sections 4, 5 and 6 apply to assessments of, and other matters relating to, training guarantee charge for the year commencing on 1 July 1990 and for each subsequent year.

(2) The amendments made by paragraphs 3 (b) and (c), section 5 and paragraph 6 (a), in so far as they apply in relation to offences, apply in relation to offences committed on or after the later of the following:

(a) 1 July 1991;

(b) the date of commencement of this subsection.

(3) The amendments made by sections 7, 8 and 10 apply to assessments of, and other matters relating to, training guarantee charge for the year commencing on 1 July 1991 and for each subsequent year.

(4) The amendment made by section 9 applies to amounts incurred after the commencement of this subsection.

(5) The amendments made by sections 12, 13, 14 and 16 apply to applications or requests made on or after the date of commencement of this subsection.

(6) The amendment made by section 17 applies in relation to certificates issued in accordance with an application or request made on or after the date of commencement of this subsection.

Amendment of assessments

20. Section 49 of the Principal Act does not prevent the amendment of an assessment for the purpose of giving effect to this Act.

NOTE

1. No. 60, 1990.

*[Minister's second reading speech made in—
House of Representatives on 11 April 1991
Senate on 14 May 1991]*