



ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Interpretation</p> <p>3. Employment Tribunal to act as controlling authority</p> <p>4. Appeals generally</p> <p>5. Appeals to Employment Court</p> <p>6. Repeal</p>	<p>7. References to Court changed to references to Employment Tribunal</p> <p>8. Objectives and functions of New Zealand committees</p> <p>9. Board may make apprenticeship orders</p> <p>10. Provisions contained in awards</p> <p>11. Breaches of Act, recovery of money, etc.</p>
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1991, No. 23

An Act to amend the Apprenticeship Act 1983

[7 May 1991

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Apprenticeship Amendment Act 1991, and shall be read together with and deemed part of the Apprenticeship Act 1983 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 15th day of May 1991.

2. Interpretation—(1) The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Agency’ means the Education and Training Support Agency established by section 270 of the Education Act 1989:

“‘Apprentice’ means any person employed under an agreement for apprenticeship under section 12 of this Act, or under a contract:

“‘Apprenticeship order’ means an order under section 33 of this Act, and includes any amendment made to it and any matters included in it pursuant to this Act or any other enactment:

- “ ‘Assessed training capacity’, in relation to any employer, means the training capacity for the time being assessed under this Act for that employer:
- “ ‘Board’ means the Agency’s Board:
- “ ‘Commissioner’ means the Commissioner of Apprenticeship appointed under section 44 (1) of this Act:
- “ ‘Contract’ means a contract of apprenticeship registered under this Act:
- “ ‘District’ means an area in respect of which a District Commissioner is for the time being appointed; and, in relation to any District Commissioner, means that District Commissioner’s District or Districts:
- “ ‘District Commissioner’ means a District Commissioner of Apprenticeship appointed under section 46 (1) of this Act:
- “ ‘Employer’ means a person who employs or intends to employ any apprentice:
- “ ‘Employer member’ means,—
- “(a) In relation to a New Zealand committee, a member of that committee appointed after consultation with the organisations of employers concerned; and
- “(b) In relation to a local committee, a member of that committee appointed on the nomination of one or more organisations of employers:
- “ ‘Employment Tribunal’ means the Employment Tribunal established under the Employment Contracts Act 1991:
- “ ‘General Manager’ means the Agency’s general manager:
- “ ‘Industry’ includes a group of industries and any branch of any industry:
- “ ‘Local committee’ means an apprenticeship committee appointed under section 34 of this Act in respect of a specified locality:
- “ ‘Minister’ means the Minister of the Crown for the time being responsible for the administration of this Act:
- “ ‘New Zealand committee’ means an apprenticeship committee appointed under section 27 of this Act in respect of the whole of New Zealand:
- “ ‘Relevant industry’ means an industry for which there exists any apprenticeship order:
- “ ‘Training capacity’, in relation to any employer, means the maximum number of apprentices that employer

is capable of training effectively at the same time while employed by that employer:

“ ‘Worker member’ means,—

“(a) In relation to a New Zealand committee, a member of that committee appointed after consultation with the organisations of workers concerned; and

“(b) In relation to a local committee, a member of that committee appointed on the nomination of one or more organisations of workers:

“ ‘Working day’, in relation to a matter concerning any apprentice, means a day on which both the establishment in which that apprentice is for the time being (or was last) employed and the appropriate office of the Agency are open.”

(2) The Education Amendment Act 1990 is hereby consequentially amended by repealing so much of the Second Schedule as relates to section 2 of the Apprenticeship Act 1983.

3. Employment Tribunal to act as controlling authority—(1) The principal Act is hereby amended by repealing sections 4 and 4A and the heading above section 4, and substituting the following heading and section:

“Employment Tribunal

“4. (1) In the exercise and performance of the powers and functions conferred on it by this Act, the Employment Tribunal shall act, and shall be deemed to act, as a controlling authority rather than in its ordinary judicial capacity.

“(2) Subsection (1) of this section shall not limit the Employment Tribunal’s powers in the exercise and performance of its powers and functions under this Act or any other enactment.

“(3) In the exercise and performance of its powers and functions under this Act, the Employment Tribunal shall bear in mind the desirability of—

“(a) Protecting the employment of apprentices during their training;

“(b) Every individual apprentice receiving theoretical and practical training that will result in the acquisition of a recognised marketable skill:

“(c) The training of such numbers and kinds of skilled workers as the industry and economy of New Zealand require:

“(d) Equal involvement of employers and workers in matters relating to apprenticeship.

“(4) Subject to subsection (3) of this section, where any matter before the Employment Tribunal (whether by way of appeal or not) relates to or involves any action or decision of a New Zealand committee or local committee, the Employment Tribunal shall have regard to—

“(a) The objectives of New Zealand committees or local committees, as the case requires; and

“(b) The extent to which the committee concerned has had regard to those objectives in taking the action, or making the decision, concerned.

“(5) Before making any decision, confirmation, order, amendment, cancellation, or modification under this Act, the Employment Tribunal shall allow any organisation that, or person who, in the opinion of the Employment Tribunal, is concerned with or may be affected by it an opportunity to be heard and call evidence relating to it.”

(2) The Education Amendment Act 1990 is hereby consequentially amended by repealing so much of the Second Schedule as relates to sections 4 and 4A of the Apprenticeship Act 1983 and the heading before section 4 of that Act.

4. Appeals generally—Section 5 of the principal Act is hereby amended by omitting the words “the Court” wherever they appear, and substituting in each case the words “the Employment Tribunal”.

5. Appeals to Employment Court—The principal Act is hereby amended by repealing sections 6 and 7, and substituting the following section:

“6. Any party to any proceedings under this Act who is dissatisfied with any decision of the Employment Tribunal under section 52 of this Act may, in accordance with section 95 of the Employment Contracts Act 1991, appeal to the Employment Court against that decision.”

6. Repeal—The principal Act is hereby amended by repealing section 8.

7. References to Court changed to references to Employment Tribunal—(1) Sections 9 to 11, 12 (1) (d) (i), 12 (2) (c), 12 (2) (d), 12 (2) (g) (ii), 13 (7), 13 (12), 13 (13), 14 (6) (b), 14 (7), 22 (4) (c), 22 (6) (b) (ii), 22 (6) (c), 22 (7), 23 (2), 24 (4) (b), 24 (4) (c), 24 (5), 24 (6), 27 (3), 27 (4), 27 (6), 29 (3), and 30 are

hereby amended by omitting the words “the Court” wherever they appear, and substituting in each case the words “the Employment Tribunal”.

(2) Sections 22 (6) (b), 24 (4) (b), and 24 (5) (a) of the principal Act are hereby amended by omitting the words “the Court’s” wherever they appear, and substituting in each case the words “the Employment Tribunal’s”.

8. Objectives and functions of New Zealand committees—(1) Section 32 (2) of the principal Act is hereby amended by repealing paragraph (c) (as amended by section 327 of the Labour Relations Act 1987), and substituting the following paragraph:

“(c) To apply to the Board for apprenticeship orders, and recommend to the Board what each order should contain:”.

(2) Section 32 (5) of the principal Act (as amended by section 327 of the Labour Relations Act 1987) is hereby amended by omitting the words “Arbitration Commission”, and substituting the word “Board”.

9. Board may make apprenticeship orders—(1) Section 33 of the principal Act (as amended by section 327 of the Labour Relations Act 1987) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) From time to time, as it thinks necessary or desirable, the Board may, on the application of any New Zealand committee (or the Commissioner acting in place of any disestablished New Zealand committee),—

“(a) Make an order for the whole of New Zealand prescribing training patterns, wages, and conditions of employment for apprentices in any industry for which that committee or, as the case requires, any New Zealand committee is or was established:

“(b) Cancel or amend any such order.”

(2) Section 33 of the principal Act (as so amended) is hereby further amended by omitting from subsections (3), (4) (b), and (4) (c) (vii) the words “Arbitration Commission” wherever they appear, and substituting in each case the word “Board”.

(3) Section 33 of the principal Act is hereby further amended by repealing subsections (7) and (8).

10. Provisions contained in awards—The principal Act is hereby amended by repealing section 49.

11. Breaches of Act, recovery of money, etc.—(1) Section 52 of the principal Act (as amended by section 328 of the Labour Relations Act 1987 and section 50 (1) of the Education Amendment Act 1990) is hereby amended by repealing subsections (2) to (4), and substituting the following subsections:

“(2) All proceedings for a breach of this Act shall be commenced in the Employment Tribunal.

“(3) Without affecting any other remedies for the recovery of money payable under a contract, where there has been any default in payment of any such money or where any payment of any such money has been made at a rate lower than that legally payable to the apprentice, the whole or any part, as the case may require, of any such money may be recovered by the apprentice or by a District Commissioner to the use of the apprentice by action commenced in the Employment Tribunal in the same manner as an action under section 48 of the Employment Contracts Act 1991, notwithstanding the acceptance by the apprentice of any payment at a lower rate or any express or implied agreement to the contrary, and subsection (2) of that section shall apply accordingly.”

(2) The Education Amendment Act 1990 is hereby consequentially amended by repealing so much of the Second Schedule as relates to section 52 of the Apprenticeship Act 1983.

This Act is administered in the Department of Labour.
