



# **Training Guarantee (Administration) Amendment Act 1994**

**No. 57 of 1994**

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# **Training Guarantee (Administration) Amendment Act 1994**

**No. 57 of 1994**

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

The Parliament of Australia enacts:

[Assented to 7 April 1994]

### **Short title etc.**

**1.(1)** This Act may be cited as the *Training Guarantee (Administration) Amendment Act 1994*.

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

### **Commencement**

**2.** This Act commences on the day on which it receives the Royal Assent.

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**Interpretation**

3. Section 4 of the Principal Act is amended:

- (a) by omitting “25 and 26” from the definition of “eligible training expenditure” and substituting “25, 26 and 26A”;
- (b) by inserting “a subsidy or” after “include” in the definition of “reimbursement”;
- (c) by omitting the definition of “training guarantee shortfall” and substituting the following definition:

“ **‘training guarantee shortfall’** has the meaning given by sections 14 and 15C;

Note: Sections 15A and 15D provide for a training guarantee shortfall to be reduced in certain cases.”;

- (d) by inserting the following definitions:

“ **‘business group’** has the meaning given by section 4AA;

**‘employer group’**, in relation to a year, means 2 or more entities in relation to which this Act applies, because of paragraph 12(3)(a), as if the entities were a single employer during that year;

**‘entity’** means a person as defined by:

- (a) the definition of ‘person’ in this section; and
- (b) section 11A;

but does not include a body politic;

**‘training guarantee excess’** has the meaning given by section 14A;

Note: Sections 15A and 15D provide for how a training guarantee excess is to be applied.”.

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

**Interpretation—meaning of “business group”**

“4AA.(1) For the purposes of this Act, a business group consists of:

- (a) a corporation and all corporations that are its subsidiaries (whether or not the corporation is itself a subsidiary of some other corporation); or
- (b) the following entities:
  - (i) an entity that controls another entity; and
  - (ii) each entity that the first-mentioned entity controls;

whether or not the first-mentioned entity is itself controlled by some other entity.

“(2) For the purposes of this Act, the question whether one corporation is a subsidiary of another is to be determined in the same way as the question whether one corporation (within the meaning of the Corporations Law) is a subsidiary of another is determined under that Law.

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“(3) For the purposes of this Act as it applies in relation to a year (**‘the relevant year’**) the question whether one entity controls another is to be determined in the same way as the question whether one Part 3.6 entity controls another is determined for the purposes of Part 3.6 of the Corporations Law.

Note: Section 294B of the Corporations Law provides for when one Part 3.6 entity is taken to control another for the purposes of Part 3.6 of that Law.

“(4) In this section:

**‘company’** has the same meaning as in the Corporations Law;

**‘financial year’** has the same meaning as in the Corporations Law;

**‘Part 3.6 of the Corporations Law’** means that Part as it applies in relation to a company in relation to a financial year ending on 30 June in the relevant year;

**‘Part 3.6 entity’** means an entity within the meaning of Part 3.6 of the Corporations Law.”.

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

5. Section 6 of the Principal Act is amended:

(a) by omitting from paragraph (b) “for a later year” and substituting “for a year commencing after 1 July 1990 but before 1 July 1993”;

(b) by adding at the end the following word and paragraphs:

“; and (c) for the year commencing on 1 July 1993—\$2,260; and

(d) for a later year—the amount calculated in relation to the year using the formula:

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

**Election by members of business group**

6. Section 12 of the Principal Act is amended:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) Two or more entities may elect to have themselves treated as a single employer in relation to a year for the purposes of this Act.

“(2) An election in relation to a year must be made in writing in the prescribed form on or before 30 September in the next year.”;

(b) by omitting from subsection (3) “If members of a business group make an election:” and substituting “Subject to this section, if 2 or more entities (**‘the members’**) make an election in relation to a year:”;

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- (c) by omitting subsections (4), (5) and (6) and substituting the following subsections:

“(4) An election in relation to a year is of no effect unless the entities to which it relates were members of the same business group at the end of 30 June in that year.

“(5) An election in relation to a year is of no effect if, apart from this subsection, it would be in force in relation to an entity in relation to which there is still in force an earlier election in relation to the same year.

“(6) An election in relation to a year is of no effect if any of the entities to which it relates:

- (a) is, under regulations in force for the purposes of section 18A, an eligible outstanding trainer in relation to that year or in relation to a 3-year period including that year; or
- (b) is one of 2 or more entities that, because of an election under such regulations, are taken to be a single employer that is, under such regulations, an eligible outstanding trainer in relation to that year or in relation to a 3-year period including that year.”.

7. After section 14 of the Principal Act the following section is inserted:

**Training guarantee excess**

“14A.(1) The **training guarantee excess** of an employer in a year is the amount (if not less than 0) worked out using the formula:

$$\text{Net eligible training expenditure} \quad - \quad \text{Minimum training requirement.}$$

“(2) If, because of subsection (1), an employer group has a training guarantee excess (**‘the group excess’**) in a year, then, despite section 12 and that subsection, each member of the group has a training guarantee excess in that year that is worked out using the formula:

$$\frac{\text{Member's annual national payroll}}{\text{Employer group's annual national payroll}} \times \text{Group excess}$$

where:

**‘Employer group’s annual national payroll’** means the total of the respective annual national payrolls for that year of the members of the group;

**‘Group excess’** means the group excess;

**‘Member’s annual national payroll’** means that member’s annual national payroll for that year.”.

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8. After section 15 of the Principal Act the following sections are inserted:

**Carry forward of training guarantee excess**

“15A.(1) This section applies if:

- (a) an employer (other than an employer group) has a training guarantee excess in a year (**‘year 1’**), whether or not it has been reduced by section 15D; and
- (b) the employer has a training guarantee shortfall in the next year (**‘year 2’**), whether or not it has been reduced by an earlier application of this section.

“(2) This section also applies if:

- (a) an employer (other than an employer group) has a training guarantee excess in a year (**‘year 1’**), whether or not it has been reduced by section 15D, an earlier application of this section, or both; and
- (b) the employer has a training guarantee shortfall in year 3 (the second year after year 1).

“(3) If the training guarantee excess is equal to or greater than the training guarantee shortfall:

- (a) the shortfall is reduced, or further reduced, as the case requires, to 0; and
- (b) the excess is reduced, or further reduced, by the amount of the shortfall.

“(4) If the training guarantee excess is less than the training guarantee shortfall:

- (a) the shortfall is reduced, or further reduced, by the amount of the excess; and
- (b) the excess is reduced, or further reduced, to 0.

**Employer may elect to postpone training guarantee shortfall**

“15B.(1) An employer who has a training guarantee shortfall in a year may elect to postpone the shortfall, whether or not it has been reduced by section 15A.

“(2) The election must be made by giving written notice in the prescribed form to the Commissioner on or before 30 September in the next year or such later day as the Commissioner allows.

“(3) An election cannot be revoked after 30 September in the next year unless the Commissioner otherwise allows.

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**Effect of election by employer group to postpone training guarantee shortfall**

“15C.(1) If an employer group elects to postpone a training guarantee shortfall (**‘the group shortfall’**) in a year, this section applies despite sections 12 and 14.

“(2) Each member of the group has a training guarantee shortfall in that year that is worked out using the formula:

$$\frac{\text{Member's annual national payroll}}{\text{Employer group's annual national payroll}} \times \text{Group shortfall}$$

where:

**‘Employer group’s annual national payroll’** means the total of the respective annual national payrolls for that year of the members of the group;

**‘Group shortfall’** means the group shortfall;

**‘Member’s annual national payroll’** means that member’s annual national payroll for that year.

“(3) Each member of the group is taken to have elected under section 15B to postpone the training guarantee shortfall that the member has because of subsection (2) of this section.

**Effect of election by employer other than employer group**

“15D.(1) If an employer (other than an employer group) elects to postpone a training guarantee shortfall (**‘the postponed shortfall’**) in a year (**‘year 1’**), training guarantee charge is not payable on the postponed shortfall except as provided in this section. This section applies to training guarantee shortfalls of the employer in the order in which they arise.

“(2) If:

(a) the employer has a training guarantee excess in the next year (**‘year 2’**), whether or not the excess has been reduced by an earlier application of this section; and

(b) the excess is equal to or greater than the postponed shortfall;

then:

(c) the postponed shortfall is reduced, or further reduced, as the case requires, to 0; and

(d) the excess is reduced by the amount of the postponed shortfall.

“(3) If:

(a) the employer has a training guarantee excess in year 2, whether or not the excess has been reduced by an earlier application of this section; and



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(b) the excess is less than the postponed shortfall;

then:

(c) the postponed shortfall is reduced, or further reduced, by the amount of the excess; and

(d) the excess is reduced, or further reduced, to 0; and

(e) if the employer has a training guarantee excess in year 3 (the year after year 2):

(i) subsections (5) and (6) apply; and

(ii) a reference in those subsections to the postponed shortfall is a reference to the postponed shortfall as so reduced or further reduced; and

(f) otherwise—training guarantee charge is payable on the postponed shortfall as so reduced or further reduced.

“(4) If the employer does not have a training guarantee excess in year 2,

then:

(a) if the employer has a training guarantee excess in year 3 (the year after year 2)—subsections (5) and (6) apply; and

(b) otherwise—training guarantee charge is payable on the postponed shortfall.

“(5) If the training guarantee excess in year 3 is equal to or greater than the postponed shortfall:

(a) the postponed shortfall is reduced, or further reduced, as the case requires, to 0; and

(b) the excess is reduced by the amount of the postponed shortfall.

“(6) If the training guarantee excess in year 3 is less than the postponed shortfall:

(a) the postponed shortfall is reduced, or further reduced, by the amount of the excess; and

(b) training guarantee charge is payable on the postponed shortfall as so reduced or further reduced; and

(c) the excess is reduced to 0.

“(7) Subject to section 74, training guarantee charge that is payable under this section is taken to have become due and payable on the day (**‘the original due date’**) when training guarantee charge on the postponed shortfall would have become due and payable apart from this section.

**Note:** Because of this subsection, an employer will be liable to penalties, calculated from the original due date, in so far as the postponed shortfall is not eliminated by a training guarantee excess in either or both of year 2 and year 3.

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“(8) For the purposes of this section, if training guarantee charge is not payable by the employer for year 2 or year 3 because of section 16, 17, 18 or 18A, the employer is taken to have a training guarantee excess in that year equal to the employer’s net eligible training expenditure in that year.

“(9) This section does not affect the employer’s obligation to lodge a training guarantee statement.”.

### **Exemption for outstanding trainers**

**9.** Section 18A of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) The regulations may provide:

- (a) for 2 or more entities to elect to have themselves treated as a single employer, in relation to a year or a 3-year period, for the purposes of this section and the regulations in force for the purposes of this section; and
- (b) for the effects of such an election.”.

### **Meaning of net eligible training expenditure**

**10.** Section 24 of the Principal Act is amended:

- (a) by omitting from subsection (1) “subsidies and”; and
- (b) by omitting from subsection (3) “subsidies and” (wherever occurring).

### **Examples of eligible training expenditure**

**11.** Section 26 of the Principal Act is amended:

- (a) by omitting paragraphs (1)(j) and (k) and substituting the following paragraphs:
  - “(j) expenditure incurred by the employer by way of rent that was paid for a building and is directly attributable to a period during which the building was 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 that was incurred by the employer in relation to hiring or leasing equipment and is directly attributable to a period during which the equipment was used solely or principally for the purpose of engaging in an activity referred to in paragraph 25(2)(a), (b), (c) or (d).”;
- (b) by omitting from subsection (2) everything after “equal to” and substituting the following:

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“the depreciation that would be allowable to the employer under the *Income Tax Assessment Act 1936* in respect of the property in relation to the year concerned if:

- (a) the employer used the property, during the whole of the year concerned, for the purpose of producing assessable income within the meaning of that Act; and
- (b) that year were a year of income, within the meaning of that Act, of the employer.”.

12. After section 26 of the Principal Act the following section is inserted:

**Eligible training expenditure consisting of depreciation in respect of certain property**

“26A.(1) If, during a year, an employer incurs capital expenditure that (otherwise than because of subsection 26(2)) is not eligible training expenditure of the employer but is directly attributable to the acquisition, construction, extension, alteration or improvement of depreciable property, this section applies to the property in relation to each year (**‘the year of use’**):

- (a) that is the first-mentioned year or a later year; and
- (b) during some or all of which the employer uses the property solely or principally for the purpose of engaging in an activity referred to in paragraph 25(2)(a), (b), (c) or (d).

“(2) An amount worked out using the following formula is eligible training expenditure incurred by the employer in the year of use:

$$\frac{\text{Eligible use days}}{\text{Days in year of use}} \times \text{Depreciation}$$

where:

**‘Eligible use days’** means the total number of days in the year of use on which the employer uses the property as mentioned in paragraph (1)(b);

**‘Days in year of use’** means the number of days in the year of use;

**‘Depreciation’** means the depreciation that would be allowable to the employer under the *Income Tax Assessment Act 1936* in respect of the property in relation to the year of use if:

- (a) the employer used the property, during the whole of the year of use, for the purpose of producing assessable income within the meaning of that Act; and
- (b) that year were a year of income, within the meaning of that Act, of the employer.”.

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**Meaning of eligible training program**

13. Section 27 of the Principal Act is amended by omitting from paragraph (2)(a) “is appropriately qualified or experienced to design a training program of the relevant type;” and substituting “has, or by 2 or more persons who together have, a working knowledge of the subject area of the program, and the skills necessary to design or conduct the relevant type of training program;”.

**Meaning of eligible training program—work experience etc. for students and teachers**

14. Section 27A of the Principal Act is amended:

- (a) by omitting from paragraph (1)(d) “Territory; and” and substituting “Territory.”;
- (b) by omitting paragraph (1)(e).

**Annual training guarantee statements**

15. Section 40 of the Principal Act is amended by inserting in subsection (1) “, or would be liable apart from section 15A,” after “liable”.

**Requirements for training guarantee statement**

16. Section 42 of the Principal Act is amended by omitting subparagraphs (d)(iv) and (v) and substituting the following subparagraphs:

- “(iv) the employer’s training guarantee shortfall in the year, disregarding sections 15A to 15D; and
- (iva) if the employer has a training guarantee excess in the second year before the year concerned—that excess, or that excess as reduced because of subsection 15A(1) or by section 15D, or both, as the case requires; and
- (ivb) if the employer has a training guarantee excess in the year before the year concerned—that excess, or that excess as reduced by section 15D, as the case requires; and
- (v) the training guarantee charge (if any) payable for the year concerned; and”.

17. After section 42 of the Principal Act the following section is inserted in Division 1 of Part 6:

**Further training guarantee statement about postponed training guarantee shortfall**

“42A.(1) If an employer is liable to pay training guarantee charge for a year (**‘the shortfall year’**) because of paragraph 15D(3)(f), (4)(b) or (6)(b), the employer must lodge a further training guarantee statement for the year on or before:

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

“(2) The statement must:

- (a) be in a form that is approved by the Commissioner for the purposes of this section and deals with the prescribed matters; 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 training guarantee shortfall in the shortfall year, or that shortfall as reduced by section 15A, as the case requires; and
  - (ii) whether the employer has a training guarantee excess in the first year after the shortfall year and, if so:
    - (A) the amount of that excess; and
    - (B) the shortfall as reduced by subsection 15D(2) or (3); and
  - (iii) whether the employer has a training guarantee excess in the second year after the shortfall year and, if so:
    - (A) the amount of that excess; and
    - (B) the shortfall as reduced by subsection 15D(5) or (6); and
  - (iv) the training guarantee charge payable on the shortfall or on the shortfall as reduced or further reduced, as the case requires; and
- (e) contain such other information as is required to complete the form.”.

**Liquidators etc.**

**18.** Section 78 of the Principal Act is amended by inserting after paragraph (1)(b) the following word and paragraph:

“or (c) is appointed on a particular day, under section 436A, 436B or 436C of the Corporations Law, as administrator of an employer that is a company;”.

**Failure to provide statements or information**

**19.** Section 84 of the Principal Act is amended:

- (a) by omitting subparagraph (2)(a)(iv) and substituting the following subparagraphs:
  - “(iv) the employer’s training guarantee shortfall in the year, disregarding sections 15A to 15D;

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- (iva) if the employer has a training guarantee excess in the second year before the first-mentioned year—that excess, or that excess as reduced because of subsection 15A(1) or by section 15D, or both, as the case requires;
- (ivb) if the employer has a training guarantee excess in the year before the first-mentioned year—that excess, or that excess as reduced by section 15D, as the case requires;
- (v) if the employer has a training guarantee excess in the first year after the first-mentioned year—that excess, or that excess as reduced by subsection 15D(5) or (6), as the case requires;
- (vi) if the employer has a training guarantee excess in the second year after the first-mentioned year—that excess;”;
- (b) by omitting from paragraphs (2)(a) and (b) “or 41” and substituting “, 41 or 42A”;
- (c) by inserting after subsection (2) the following subsection:

“(2A) An election under section 15B to postpone a training guarantee shortfall in a year is to be disregarded in working out, for the purposes of this section, the amount of training guarantee charge payable by the employer for the year.”.

### **Application of amendments**

**20.(1)** The amendments made by this Act (except sections 12 and 18) apply in relation to a year beginning on or after 1 July 1993.

**(2)** Section 26A of the Principal Act as amended by this Act applies in relation to capital expenditure incurred by an employer, whether before, at or after the commencement of this Act, but so applies only for the purposes of working out the employer’s net eligible training expenditure in a year beginning on or after 1 July 1993.

**(3)** An election in relation to the year beginning on 1 July 1993 that was in force under section 12 of the Principal Act immediately before the commencement of this Act has effect after that commencement as if it had been made under section 12 of the Principal Act as amended by this Act.

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### **NOTE**

1. No. 60, 1990, as amended. For previous amendments, see Nos. 111 and 216, 1991; and Nos. 79, 92, 118 and 210, 1992.

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[*Minister's second reading speech made in—*  
*House of Representatives on 14 December 1993*  
*Senate on 7 February 1994*]