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1978-79, No. 16

An Act to make provision for apprenticeship in certain trades and for matters connected therewith

(0 March 1979

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:-

PART I

PRELIMINARY

1. Short title - This Act may be cited as the Apprenticeship Act 1978-79.

2. Interpretation - In this Act, unless the context otherwise requires:

"Apprentice" means any person who has contracted, pursuant to this Act, to serve an employer and to learn and be taught a designated trade;

"Apprenticeable trade" means a trade designated by the Council as an apprenticeable trade;

"Apprenticeship" means a system whereby an employer undertakes by contract to employ a person and to train him or have him trained systematically in a trade for a period the duration of which is fixed in advance and in the course of which the apprentice is bound to work in the employer's service;

"Chairman" means the Chairman of the Apprenticeship Council;

"Council" means the Apprenticeship Council established under this Act;

"Employer" means any person to whom an apprentice is bound, or is proposed to be bound, in accordance with this Act, by contract of apprenticeship, and includes any Government Department;

"Industry" means a trade, business or occupation, or any branch thereof, or any group of trades, businesses or occupations;

"Inspector" means an Inspector of Apprentices appointed under this Act;

"Parent or Guardian" means a parent or guardian of an apprentice under the age of twenty-one years and where an apprentice has no parent or guardian resident in the Cook Islands and capable of acting, includes a person approved by the Council in lieu of a parent or guardian;

"Probationer" means a prospective apprentice employed by the prospective employer on probation in accordance with subsection (5) of Section 13 of the Act;

"Minister" means the Minister of Education;

"Secretary" means the Secretary of the Council appointed under this Act;

"The Regulations" means the Regulations made under this Act;

"This Act" includes the Regulations;

"Trade" means any trade or calling to which this Act applies.

PART II
ADMINISTRATION

3. Administration of Act - (1) This Act shall be administered by the Department of Education which shall be responsible for the general and technical education of apprentices, the setting of training standards and the conducting of tests or examinations in these regards.
- (2) This Act shall not apply to any contract of marine apprenticeship.
4. Establishment of Apprenticeship Council - (1) There is hereby established for the purposes of this Act a Council, to be known as the Apprenticeship Council, which shall be representative of industry and Government.
- (2) The Council shall consist of:
- (a) the Secretary of Education or his nominee first approved by the Minister;
 - (b) four members who shall be appointed by the Minister, at least two of whom shall be representative of employers.
- (3) The members referred to in paragraph (b) of subsection (2) of this section and appointed by the Minister shall unless their appointments otherwise terminate hold office for a term of two (2) years and shall be eligible for reappointment.
- (4) The Council at its first meeting and each year thereafter shall appoint from its members a chairman and a deputy chairman.
- (5) In the event of the absence of the Chairman from a meeting of the Council or his illness or inability to act, the Deputy Chairman shall have and may exercise all the powers and functions of the Chairman.
- (6) At a meeting of the Council three (3) members shall form a quorum.
- (7) The Council shall cause minutes of its proceedings to be kept.
- (8) Subject to this Act, the Council may regulate its own proceedings.
- (9) Subject to this Act, the Council shall have the power to co-opt the services of any person or persons or organisations it considers could assist in its functions for any particular matter. Persons so co-opted shall have no voting power in Council deliberations.
- (10) The ordinary meetings of the Council shall be held quarterly and at such time and place as the Council may determine.
- Additional meetings may be convened by the Chairman as he deems necessary, or convened by him on the request in writing signed by at least two members of the Council.
- (11) (a) The Council shall function by resolution which shall be carried by a simple majority of members present voting; and
- (b) The Chairman shall have a deliberative vote and in the event of an equality of votes, shall have a casting vote.
- (12) Members of the Council who are not full-time salaried employees of Government may be paid such fees and allowance as shall be fixed from time to time by Order-in-Executive Council.
- (13) If any member of the Council is temporarily incapacitated from attending any meeting of the Council, he may with the consent of the Chairman authorise another person to act as his deputy.

- (14) The Minister may attend any meeting of the Council and may take part in any discussions or debates between members of the Council but shall not be entitled to vote on any resolution before the Council.
- (15) If any member appointed under section 2 (b) of this Act, dies, becomes insolvent, becomes mentally incapacitated or fails to attend three (3) consecutive meetings of the Council without appointing any other person to attend and act on his behalf the Minister may revoke his appointment and appoint another person for the balance of his unexpired term.
5. Functions of the Council - The powers and duties of the Council shall be:
- (a) To decide the trades or branches of trade to be designated as apprenticeable trades under this Act and it may at any time add to or delete from the list of trades so designated and advise the Minister accordingly;
 - (b) to hear objections to the proposed designation of any trade, or branch of trade, and to report thereon to the Minister;
 - (c) to exercise a general supervision over the theoretical and practical training of apprentices;
 - (d) to ascertain and designate the character, scope and minimum standard of the practical and theoretical training to be afforded to apprentices;
 - (e) to ascertain by practical or written or oral examination, by inspection of his work or by reports furnished by his employer or otherwise the degree of proficiency of an apprentice;
 - (f) to issue grade or progress certificates to apprentices who have attained required standards of proficiency;
 - (g) to advise the Minister of Education on matters affecting apprenticeship in the Cook Islands as it thinks fit or as referred to it by the Minister;
 - (h) to issue a Certificate of Completion of Training when an apprentice has completed the term of apprenticeship provided for in his contract of apprenticeship and attained the standard of education and trade experience required for his apprenticeship course;
 - (i) to exercise any of the powers conferred, or discharge any of the duties imposed upon it by this Act, and to inquire into any matters relating to apprenticeship.
6. Inquiries by the Council - The Council may from time to time appoint a Committee or Committees consisting of two or more persons and may from time to time delegate to any such committee such of the powers and functions of the Council and for the purposes of the exercise of and performance of its powers both the Council and any such Committee may:-
- (a) summon witnesses;
 - (b) bear and record evidence;
 - (c) require a person to produce a document, book or paper in his custody or control which has relevance to the matter being enquired into by the Council or any committee.
7. Secretary to the Council - (1) The Council shall appoint a Secretary to the Council who may hold that office in conjunction with any other office not incompatible therewith.
- (2) The Secretary shall perform such duties and functions as are determined by the Council.
- (3) The Department of Education shall provide secretarial services to the Council.

8. Apprenticeship Register - The Secretary shall establish and maintain an apprenticeship register in accordance with such form as shall be determined by the Council containing:
- (a) The names of all apprentices in each apprenticeable trade;
 - (b) a record of all assignments and cancellation of contracts of apprenticeship;
 - (c) particulars regarding the annual progress of apprentices and the completion of apprenticeship courses;
 - (d) a record for each apprenticeable trade of the names of all persons who have gained any certificate under the provisions of this Act in the apprenticeship course of that trade.

PART III

INSPECTORS AND TRADE PANELS

9. Inspectors - (1) The Council may designate officers and persons to be inspectors of Apprentices, either on a full-time or part-time basis, for purposes of inspection of training facilities and the training of apprentices.
- (2) An Inspector may with or without notice:
- (a) Enter at all reasonable times upon premises in or on which apprentices are or are proposed to be employed;
 - (b) interview an apprentice, whether within or outside the hearing of any other person;
 - (c) interview an employer;
 - (d) examine books or documents relating to the wages and conditions of employment of an apprentice and take copies of extracts from any such book or document;
 - (e) require an employer or apprentice to answer questions put to him concerning the wages and conditions of employment of apprentices;
 - (f) report to the Council on all offences under this Act and where instructed so to do by the Council institute proceedings for such offences.
- (3) No person shall, without lawful excuse:
- (a) Hinder or obstruct an Inspector in the execution of his powers and functions under this Act; or
 - (b) refuse or fail to answer questions put to him under sub-section (2) of this section.
- (4) Any inspectors who are not full-time salaried employees of Government may be paid such fees and allowances as may be decided from time to time by the Minister acting on the advice of the Council.
10. Panels of Trade Advisers - (1) For the purposes of this Act, the Council may appoint persons to be members of Panels of Trade Advisers in respect of an apprenticeable trade.
- (2) A Panel of Trade Advisers in respect of an apprenticeable trade shall advise the Council on such matters relating to apprenticeship in that trade as are from time to time referred to it by the Council.
- (3) Members of Trade Panels who are not full-time salaried employees of Government may be paid such fees and allowances as may be decided from time to time by the Minister acting on the advice of the Council.

PART IVAPPRENTICESHIP GENERALLY

11. Power to admit apprentices - The Council may if it sees fit allow the entry into apprenticeship of any person under such terms and conditions as may be decided by the Council.
12. Investigations into apprenticeable trades - The Council shall make such investigations as are directed by the Minister, or as the Council thinks necessary with respect to:
 - (a) The minimum standards of education required in the case of each apprenticeable trade in order to qualify a person to enter into apprenticeship in that trade;
 - (b) the apprenticeship course required in the case of each apprenticeable trade, and the general and technical education and trade experience necessary for that course;
 - (c) the extent to which attendance at classes for instruction in the subjects of an apprenticeship course should be compulsory;
 - (d) the number of hours and times in each year of any apprenticeship course during which apprentices should attend classes for instruction in the subjects of the apprenticeship course;
 - (e) the terms and conditions of apprenticeship to be provided in contracts of apprenticeship.
13. Application for admission to apprenticeship - (1) Subject to this Act, a person desiring to become an apprentice in an apprenticeable trade may apply through his prospective employer to the Council for permission to do so.
 - (2) An application under this section shall be accompanied by:
 - (a) Satisfactory evidence of the applicant having the minimum standard of educational qualifications determined by the Council for entry into the apprenticeable trade;
 - (b) a certificate from duly qualified medical practitioner showing that the applicant is physically fit to undertake the course of training prescribed for that trade.
 - (3) On receipt of an application under this section, the Council shall determine whether the proposed employer has such qualifications and facilities as are necessary for instructing the applicant in the trade specified in the application.
 - (4) The Council may grant or refuse an application under this section or defer it for further consideration. In the event of the Council refusing or postponing an application under this section it shall advise the applicant in writing together with its reasons for so doing.
 - (5) Where the Council grants an application under this section:
 - (a) The applicant shall be employed for a period of not more than six months on probation to determine his fitness or otherwise for the apprenticeship;

- (b) in the event of him becoming an apprentice upon the expiration of the probationary period, the probationary period shall be calculated as part of the term of apprenticeship with the employer, but, unless otherwise determined by the Council, shall not be calculated as part of the term of apprenticeship with any other employer;
- (c) where the probationer does not become an apprentice upon the expiration of the probationary period, he shall not, if permission is subsequently granted for him to become an apprentice in the same apprenticeable trade with the same employer, be employed for a further probation period exceeding three months.
14. Admission to apprenticeship - (1) Where the Council is satisfied that an applicant has sufficient theoretical and practical knowledge to warrant his admission to some year of the apprenticeship course other than the first, it may permit the applicant to be admitted to some year of the apprenticeship course other than the first.
- (2) If an apprentice does not, during the period of his contract of apprenticeship, obtain the standards of general and technical education and trade experience prescribed for his apprenticeship course:
- (a) He may, with the approval of the Council and the consent of his employer, continue in the employment of the employer for a period, not exceeding twelve months, specified by the Council under the same rates of pay as if the contract of apprenticeship was in force;
- (b) if, within the prescribed period, he complies with the requirements necessary for obtaining the Certificate of Completion of Training, the Certificate may be granted to him accordingly.
15. Registration of contracts of Apprenticeship - All contracts of apprenticeship shall be processed and registered in the manner provided in resolutions passed under this Act.
16. Assignment and cancellation of contracts of apprenticeship - The Council may exercise all or any of the following powers:
- (a) If it determines that a term, covenant or condition of the contract of apprenticeship has been broken by the apprentice, the Council may, if it thinks fit, order that:
- (i) The contract of apprenticeship be cancelled;
- (ii) the employer withhold an increment in wages to an apprentice; and
- (b) if it determines that a condition of the contract of apprenticeship was broken by the employer, the Council may, if it thinks fit, order that the contract be cancelled or that it be assigned to another employer, and arrange for that assignment, and may, in any case under this paragraph, also by order, refuse to permit the first-mentioned employer to take any new apprentice for such period as it determines.

17. Transfer of Apprenticeship - (1) The Council, with the consent of the apprentice and the parent or guardian of the apprentice may, for good reasons, authorise the transfer of an apprentice, whether temporarily or permanently, from one employer to another and the assignment of the contract of apprenticeship.
- (2) Where under this Act an apprentice is transferred from one employer to another and the contract of apprenticeship is assigned, the instrument of transfer and assignment.
- Shall be in accordance with such form as is determined by the Council;
 - unless the Council otherwise directs, shall be signed by the parent or guardian of the apprentice and by the former employer and by the new employer;
 - shall be executed within two months of the transfer being effected;
 - shall be returned by the employer to the Secretary for registration within seven days after execution or such period as is determined by the Council.
18. Failure to attain the required standards - (1) Subject to the succeeding provisions of this section, an apprentice shall not pass from one stage of his apprenticeship course to the next stage until he has attained the standards of proficiency in general and technical education and trade experience prescribed for that stage.
- (2) If an apprentice fails to attain, in any stage of his apprenticeship course, the prescribed standards of proficiency in general and technical education and trade experience, the Council, if it thinks fit, on application in that behalf;
- May determine that he be granted further time to attain those standards within a time specified by the Council;
 - if at the expiration of that time he has not attained those standards the Council may, for any special reason which it deems necessary extend that time for a further specified time up to a maximum extension of two years;
 - if at the expiration of such time or further extension thereof he has not attained those standards, the Council may order that his contracts of apprenticeship be cancelled.
- (3) Where further time to attain the prescribed standards of proficiency in general and technical education and trade experience is granted to an apprentice under subsection (2) of this section, the Council may, with the consent of the employer and the apprentice and the parent or guardian extend the term or any part of the contract of apprenticeship accordingly.
- (4) When an order for the cancellation of a contract of apprenticeship is made under this section, the Council, if it thinks fit, may:
- Permit the apprentice to be apprenticed to some other apprenticesable trade;
 - if satisfied that he has sufficient theoretical and practical knowledge, permit him to enter that trade as an apprentice in a stage of his apprenticeship course other than the first stage.

19. Cancellation of Contract by Consent - (1) A contract of apprenticeship may, with the approval of the Council be cancelled by mutual consent of the employer and the apprentice and the parent or guardian, of the apprentice.
- (2) The employer shall forthwith give to the Secretary notice in writing of the date on which any such cancellation becomes effective.
20. Cancellation of contract by the Council - Without prejudice to any other provisions of this Act, with respect to the cancellation of a contract of apprenticeship, the Council, after receiving a report from the Inspector, and subject to any conditions the Council wishes to make, may cancel the contract of an apprentice if, in the opinion of the Council, there are any special circumstances which make the cancellation desirable. If the contract of apprenticeship shall be cancelled under the provisions of this Section the Council shall notify all parties to the contract of its reasons for such cancellation.
21. Statement on cancellation - Upon the cancellation of a contract of apprenticeship, the Secretary shall give to the apprentice a statement in accordance with such form as may be decided by the Council, stating what time he has served, full particulars of the trade or the part of the trade in which he has received instruction and the degree of proficiency attained by him.
22. Effect of cancellation of contract - Upon the recording by the Secretary of any cancellation of a contract of apprenticeship in accordance with this Act, that contract shall cease to have any further force or effect.
23. Extent to which contract is binding - (1) Subject to the provisions of the Minor's Contracts Act 1969, an apprentice who is a party to a contract of apprenticeship shall be bound thereby throughout its currency.
- (2) A parent or guardian of an apprentice who is a party to a contract of apprenticeship shall be bound thereby until the apprentice attains the age of twenty-one years.
24. Death of partner not to terminate apprenticeship - (1) Where a person is apprenticed to business partners, his contract of apprenticeship shall not be determined by the dissolution of the partnership of a partner.
- (2) In the case of the death or retirement from the partnership of a partner, the contract of apprenticeship shall be deemed to be assigned to the surviving or continuing partner or partners.
- (3) If upon the dissolution of a partnership the partners shall fail to agree upon which one of them shall take over the contract of apprenticeship, the Council shall decide the matter and its decision shall be binding to all persons concerned.
25. General obligations of employers and apprentices - (1) The employer of an apprentice shall teach the apprentice or cause him to be taught the trade in which he is an apprentice, by the best means in his power, and shall provide facilities for the practical training of the apprentice in the trade, and shall give the apprentice every opportunity to learn the trade and to receive during the period of his apprenticeship such technical, trade and other instruction as prescribed.

- (2) An apprentice shall, during the period of his apprenticeship conscientiously serve his employer for the purpose of being taught the trade in which he is an apprentice, and shall conscientiously and regularly accept such technical, trade and other relevant instruction as is prescribed in addition to any relevant teaching provided by his employer.

PART V

APPEALS

26. Appeals to the High Court - (1) An employer or apprentice, or in the case of an apprentice who has not reached the age of twenty-one years his parent or guardian, who is aggrieved by a decision of the Council in relation to the apprentice, the employer, or the apprenticeship, may within 21 days after the date of such decision, appeal to the High Court of the Cook Islands and the decision of such Court shall be final.
- (2) If any appeal is lodged pursuant to subsection (1) of this section the contract of apprenticeship shall continue in full force and effect until the appeal has been decided.
- (3) In this section:
- "Apprentice" includes a prospective apprentice;
- "Employer" includes a prospective employer.

PART VI

OFFENCES AND PENALTIES

27. Offences - (1) An employer who demands, accepts, or agrees to accept any consideration, premium, gift or allowance in connection with the employment or contracting by him of any probationer, apprentice or prospective apprentice in an apprenticeable trade shall be guilty of an offence against this Act.
- (2) It shall be an offence for any person:
- (a) Directly or indirectly, under any pretence of device, to employ or authorise or permit an apprentice to be employed at lower wage than the wages to which he is entitled under this Act; or
- (b) to employ an apprentice on conditions which are not consistent with those laid down by the Council under this Act.
- (3) A person who employs any person as an apprentice or authorises or permits any person to be so employed in an apprenticeable trade without the consent of the Council shall be guilty of an offence against this Act.
- (4) An employer or apprentice who fails to comply with any of the terms or conditions of his contract of apprenticeship shall be guilty of an offence under this Act.
- (5) A person who acts in contravention of, or fails to comply with, an order of the Council under this Act shall be guilty of an offence under this Act.
- (6) It shall be an offence under this Act for any person, directly or indirectly, to hinder or obstruct any other person in the exercise of such person's lawful powers and duties under this Act.

28. Penalties - (1) Every person who commits any offence under this Act shall be liable on conviction to a penalty not exceeding one hundred dollars in the case of an employer, and not exceeding ten dollars in the case of an apprentice.
- (2) Notwithstanding subsection (1) of the section, any person convicted of a continuing offence, shall be liable to a further fine not exceeding one dollar for each day during which the offence continues.
- (3) Every person who incites, aids or abets a breach of this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred dollars.

PART VII

MISCELLANEOUS

29. Copy of Apprenticeship Act - Every employer shall keep a copy of this Act and its amendments and any regulations issued thereunder at every place of business at which apprentices are employed, and shall freely make it available to an apprentice employed in that place of business.
30. Annual reports - (1) The Council shall as soon as practicable after the thirty-first day of March in any year, prepare and furnish to the Minister a report on its activities and the operation of this Act during the year on that date.
- (2) The Minister shall, as soon as practicable after receipt of the report from the Council, cause copies of it to be tabled in the Legislative Assembly.
31. Regulations - (1) The High Commissioner, by Order in Executive Council, may from time to time make all such regulations as are deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration thereof.
- (2) All regulations made under this section shall be laid before the Legislative Assembly by the Minister within twenty-eight days of the date of the making thereof if the Assembly is then in session and, if not, shall be laid before the Assembly within twenty-eight days after the date of the commencement of the next ensuing session.
- (3) The regulations made under this section will prescribe in particular but not be limited to:
- (a) The forms of application by apprentices and employers for consent by the Council to the entering into contracts of apprenticeship and the conditions under which the Council may approve any such application;
 - (b) the form and conditions of contracts of apprenticeship and the assignment of those contracts and for their registration;
 - (c) the wages, hours of work allowances and conditions of service of apprentices;
 - (d) the housing or accommodation, if any, and working conditions of apprentices;
 - (e) the fixing of standards of competence of an apprentice, at different stages of his apprenticeship, in relation to a particular trade;

- (f) the technical and practical training that shall be provided for apprentices;
 - (g) the obligations and duties of apprentices and employers in relation to classes of instruction;
 - (h) the conditions of appointment of persons to supervise examinations of apprentices and the conditions under which the Council may determine the form and content of courses;
 - (i) the conditions under which tools of the trade are to be supplied to an apprentice or a tool allowance paid;
 - (j) the types and classes of trade certificates that may be issued by the Council to apprentices on completion of their training;
 - (k) the establishment of a fund to provide prizes and scholarships for apprentices;
 - (l) the conditions under which the Council may hear and determine disputes under this Act between apprentices and employers, and may hear and determine complaints by or against apprentices or employers;
 - (m) the conditions under which the Council may delegate any portion of its powers to the Secretary;
 - (n) the fees, if any, payable with respect to any matter under this Act;
 - (o) the number of apprentices who may be employed in relation to the number of tradesmen in any workshop, business or industrial establishment;
 - (p) any other conditions of apprenticeship which the Council may deem desirable.
32. Public Service Commission to give effect to directions of Cabinet - The Public Service Commissioner, acting on the instruction of Cabinet shall give effect to any determination by Cabinet on wages or conditions of service for apprentices employed by any Department or Agency of the Government.
33. This Act shall bind the Crown - This Act shall bind the Crown and all departments and agencies of the Crown.
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This Act is administered by the Education Department.