



File: CEN_14700/1

28 February 2011

TITLE
ADDRESS

Dear NAME,

Employment status of apprentices and trainees

It has come to the attention of Skills Tasmania that there may be some ambiguity regarding the employment status of some apprentices and trainees.

The Tasmanian Training Agreements Committee (TTAC) Policy 11 (attached) mandates the essential employment requirements for all training contracts. Tasmanian training contracts can only be approved by TTAC if there is:

- (a) an employment arrangement that is not **casual**;
- (b) an employment arrangement that is in accordance with an appropriate industrial arrangement;
- (c) an employment arrangement/contract that guarantees employment for the nominal duration of the training contract;
- (d) employment of sufficient hours per week to enable the apprentice/trainee to obtain the necessary skills over the duration of the training contract;
- (e) a regular pattern of work that enables both on and off the job structured training to be planned, and implemented according to a training plan that is negotiated in the first two months of a training contract;
- (f) all training in paid work time unless otherwise agreed by TTAC.

Comment [DD1]: are predominant determinations.

The employment status of an apprentice or trainee is a question of law that is determined by the specific industrial instrument (e.g. the award or enterprise agreement) applicable to the apprentice or trainee. The employment arrangement for some employees may include the payment of loading but this payment alone does not define the employee as casual.

The TTAC decision to approve a training contract is based primarily upon the employment arrangement meeting the requirement of TTAC policy 11 and not the status of the employee as interpreted by the parties. Employees meeting the requirements of TTAC policy 11 are unlikely to be defined as casual employees by their industrial instrument.

Any employer who may be concerned regarding the employment status of their apprentice/s or trainee/s is advised to seek industrial advice from either their industry association, for example the Tasmanian Hospitality Association (THA) or the Tasmanian Chamber of Commerce and Industry (TCCI), or legal adviser.

Skills Tasmania staff are unable to provide advice regarding industrial matters. However, should you wish to discuss the requirements of either the training contract or TTAC policies, please contact either me on 6233 4642 or Deb Elliott-Vautin, Skills Tasmania Senior Training Consultant, on 6233 8018.

Yours sincerely

Carolyn Nichols
MANAGER STRATEGIC DIRECTIONS (LEARNERS)

Essential employment requirements for all training contracts.

- 11.1 A training contract can only be approved by the Tasmanian Training Agreements Committee if there is:
 - 11.101 an employment arrangement/contract that guarantees employment for the nominal duration of the training contract;
 - 11.102 employment of sufficient hours per week to enable the trainee to obtain the necessary skills over the duration of the training contract;
 - 11.103 a regular pattern of work that enables both on and off the job structured training to be planned, and implemented according to a training plan that is negotiated in the first two months of a training contract;
 - 11.104 an employment arrangement that is in accordance with an appropriate industrial arrangement;
 - 11.105 an employment arrangement that is not casual; and
 - 11.106 all training in paid work time unless otherwise agreed by TTAC.

Additional conditions for part-time training contracts

- 11.2 A part-time training contract can only be approved by the Tasmanian Training Agreements Committee if the following additional criteria are met:
 - 11.201 the apprenticeship/traineeship has been approved by TTAC to be undertaken on a part-time basis;
 - 11.202 the minimum number of hours of employment is 20 per week unless otherwise agreed by TTAC;
 - 11.203 the maximum term of the training contract is no more than twice the nominal full time duration for the qualification;
 - 11.204 the minimum term is no less than one and a half times the nominal full time duration for the qualification;
 - 11.205 Industrial arrangements must allow for part-time employment; and
 - 11.206 all other conditions specific to the pathways must be fulfilled.

Additional conditions for approval of arrangements for seasonal workers

- 11.3 TTAC may approve arrangements for some apprenticeships or traineeships to be undertaken on a seasonal basis. Arrangements may be approved on an enterprise basis provided the following criteria are met:
 - 11.301 an industrial arrangement exists that provides for a fixed term seasonal full-time or part-time workforce; and
 - 11.302 a method of training delivery that provides for seasonal part-time or full-time workers to complete the qualification in less than the usual nominal duration; or
 - 11.303 a model that provides for ongoing seasonal employment with a suspension period incorporated in the approval of the traineeship as appropriate.

Policy adopted by TTAC at meeting 68 held on 23 March 2004. Briefing Note A40/04 refers.