

Apprentice provisions in awards – training costs

Many awards say that employers must pay certain costs for apprentices, such as training fees. This guide provides information about how these award provisions operate and how FWO will treat any requests for assistance.

Apprentice training costs provisions in modern awards

Model provisions about apprentice training costs were inserted into many awards by recent Fair Work Commission (FWC) Full Bench decisions.¹ The general principles which have emerged include:

- an apprentice should not have to pay the training costs associated with their apprenticeship, such as course fees and textbooks
- the employer is not required to pay training costs upfront
- an apprentice must be given a period of time to demonstrate a commitment to, and progress in, their apprenticeship
- where an apprentice demonstrates a commitment to their apprenticeship, their employer is responsible for these costs (except where the apprentice makes '[unsatisfactory progress](#)', which is to be assessed on a case by case basis).

To understand how these award provisions operate, we need to consider the model provisions and the FWC decisions which inserted them. We also look at how these align with the training system.

While the FWO can provide advice on and enforce compliance with award and agreement provisions affecting apprentices, the structure and administration of the apprenticeship system is a matter for State and Territory training authorities.

When do these provisions start?

Check your award for the start date of these provisions. In most cases they take effect from 1 January 2014 or 1 January 2015.

All apprentices are entitled to have their training costs incurred from the start date specified in the award reimbursed or paid. This applies whether they started their apprenticeship, or employment, before or after this date.

When do apprentices need to be reimbursed?

The model provisions say that the costs must be reimbursed:

- ▶ within 6 months of the apprentice starting the relevant stage of the apprenticeship; or
- ▶ within 3 months of the apprentice starting the training with the Registered Training Organisation (RTO);

whichever happens later.

An employer can also pay training costs directly to the RTO.

An employer does not have to pay or reimburse training costs where there is 'unsatisfactory progress' (more on this below).

¹ [\[2013\] FWCFB 5411](#); [\[2013\] FWCFB 9092](#); [\[2014\] FWCFB 9156](#)

Which training costs must be reimbursed?

- ▶ **All fees charged by the RTO which are related to the training.** Depending on the RTO, fees may include:
 - ▶ the costs for providing the training
 - ▶ course and assessment materials
 - ▶ built in costs for textbooks
 - ▶ any other components determined by the RTO as compulsory costs related to the training;
- and
- ▶ **Textbooks prescribed by the RTO**, unless the employer makes the prescribed textbook (including the correct version required by the RTO) reasonably available to the apprentice.

If an apprentice's training costs are paid or reimbursed, partially or wholly, by a government scheme, their employer only needs to reimburse or pay any difference.

What is 'unsatisfactory progress?'

'Unsatisfactory progress' is not defined in the awards. It is also often not a term generally used in the training system.

The FWC's decision inserting the model provisions makes it clear that it relates to the apprentice's commitment to the apprenticeship, as shown by attendance and active participation in training, rather than the satisfactory completion of competencies:

We consider that in the context of competency based training, the emphasis should be on the demonstration of an appropriate level of commitment to the apprenticeship rather than a requirement to have completed particular competencies. The objective of the award provision should be both to avoid the apprentice having to meet the significant cost of fees whilst on low pay and to avoid the employer being required to pay upfront fees in a situation where an apprentice fails to effectively participate in training².

Unsatisfactory progress needs to be determined on a case-by-case basis for each apprentice.

Some factors to consider are discussed below (in '[What approach will the FWO take?](#)')

Examples

Sally is in the second stage of her electrical apprenticeship. She has attended all of her training and has completed her assessments but is failing some of her units. Sally has a meeting with her employer and the RTO and they agree that Sally is capable of passing and that she will get more on-the-job support and some extra help with maths and then retry the unit next year.

Although Sally did not pass these units and so is yet to complete the stage of her apprenticeship, she has genuinely participated in the required coursework, assessment and on-the-job learning. She therefore is not considered to have made 'unsatisfactory progress.'

² [\[2013\] FWCFB 5411 \[355\]-\[356\]](#)

Her employer must reimburse Sally for the training costs.

Jorg started the first stage of his cooking apprenticeship in January. He is absent without leave for his block release training in March and April and has not completed any of his required assessments.

His employer and the RTO have a meeting with him and tell him that his attendance and progress are not satisfactory. They all agree to a plan to address this. Jorg again fails to attend his training in June, won't make a commitment with his employer to attend his next training and won't return his field officer's calls.

Although Jorg is attending work, he has not demonstrated a commitment to his apprenticeship and so is making 'unsatisfactory progress.'

His employer therefore does **not** need to reimburse his training costs.

Who decides if an apprentice has made 'unsatisfactory progress?'

It is up to the parties to the training contract to determine if there has been unsatisfactory progress, in particular the employer and the RTO.

Employers, RTOs and apprentices negotiate a training plan as part of the apprenticeship which will address how the apprentice will undertake their training and assessment. There are many ways that an apprentice can do their training and assessment, from weekly on-the-job training and assessment in the workplace, to undertaking occasional block release training.

During the apprenticeship, all parties should be aware of how the apprentice is progressing and address any issues that arise. This is often an obligation in the training contract. Further information can be found in the relevant state or territory legislation governing apprenticeship arrangements.

An employer should regularly check with the RTO to make sure the apprentice is attending any off-the-job training and is making satisfactory progress. Training plans can be changed or re-negotiated to meet changed situations and needs.

What approach will the FWO take?

If an apprentice believes they have not been correctly reimbursed for fees or textbooks they may request assistance from us.

An employer should have evidence to support a decision that the apprentice's progress was unsatisfactory.

We assess whether an apprentice has unsatisfactory progress on a case-by-case basis. The factors we may consider include:

- ▶ the apprentice's training plan
- ▶ the apprentice's attendance and participation in training and at work
- ▶ assessment and competency records
- ▶ what work the apprentice has been doing
- ▶ the apprentice' previous progress through the apprenticeship
- ▶ discussions between the parties about the apprentice's attendance of performance at work and in training

- ▶ the parties' views of the apprentices' capacity for successfully completing the unit, stage or apprenticeship.

See our [Compliance and Enforcement Policy](#) for more information about how we may treat a request for assistance.

If there is a dispute about an apprentice being released for training, the training that is actually being provided to the apprentice, or in relation to the training plan, the employer and apprentice can speak to their field officer or contact the relevant State or Territory training body (see [Where can I get further information?](#)).

Frequently Asked Questions

My apprentice started their apprenticeship in January and paid their stage 1 training costs upfront. They then left their employment in May. Do I need to reimburse them for the training costs?

No.

The model provisions say that the costs need to be reimbursed:

- ▶ within 6 months of the apprentice starting the stage of the apprenticeship; or
- ▶ within 3 months of the apprentice starting the training with the RTO:

whichever happens later.

If an apprentice is no longer working for an employer at this time, there is no requirement for their former employer to reimburse them.

Example

Teresa started her apprenticeship on 15 January 2014 and her training started on 1 February 2014. Her employer is required to reimburse her within 6 months of the apprenticeship starting (15 July 2014) or within 3 months of the apprentice starting the training (1 May 2014), whichever is later. Therefore, her employer is required to reimburse her by 15 July 2014.

Teresa leaves her employment on 15 May 2014. As her employer is not required to reimburse her until 15 July 2014, her employer does not need to reimburse her when she leaves employment.

An apprentice changed employers within 6 months of starting a stage of their apprenticeship (or 3 months of starting the training). Who is responsible for reimbursing the apprentice for their training costs?

If the apprentice has already been reimbursed or had their training costs paid by the first employer, the second employer does not have to reimburse the apprentice.

If the apprentice has not been reimbursed or had the training costs paid by the first employer, then the second employer must reimburse the apprentice. The reimbursement must be made within:

- ▶ 6 months of the apprentice starting the stage of the apprenticeship; or
- ▶ 3 months of the apprentice starting the training with the RTO

whichever is later, unless there is 'unsatisfactory progress'.

I paid the training costs for my apprentice at the start of the year but then they quit (before or after 6 months). Can I claim the costs back from them?

My apprentice failed a unit or stage. Can I claim the costs back from them?

No.

The model provisions do not allow for an employer to claim back or withhold monies from an apprentice in relation to fees or textbooks that have been paid for or reimbursed by the employer.

Asking an apprentice to pay these training costs to the employer may be considered an 'unreasonable requirement to spend an amount' under the *Fair Work Act 2009*.³ This is unlawful.

It is not a permitted deduction to take money from an apprentice's wages to repay their employer for the cost of fees or textbooks.

An employer can only deduct money from wages if:

- ▶ the employee agrees in writing and it's principally for their benefit
- ▶ it's allowed by a law, a court order, or by the Fair Work Commission, or
- ▶ it's allowed under the employee's award or enterprise agreement.

Deductions for fees and textbooks are not authorised by the model award provisions and, even if authorised in writing by the employee, will not be considered to be 'principally for the employee's benefit'.

Even if an enterprise agreement or contract of employment says that an apprentice must pay an employer, or permits an employer to deduct money, for fees and prescribed textbooks, the clause will have no effect if:

- ▶ the deduction or payment benefits the employer directly or indirectly and is unreasonable in the circumstances, or
- ▶ the employee is under 18 years of age and their parent or guardian hasn't agreed in writing.⁴

My apprentice failed a unit. Do I have to reimburse them for it?

My apprentice failed a unit and is repeating it. Do I have to reimburse them for their second (or subsequent) attempt?

Yes, unless there is 'unsatisfactory progress.' This is to be assessed on a case by case basis.

My apprentice is paying their fees off on a monthly payment plan. When do I have to reimburse them?

The provisions say that the costs need to be reimbursed:

³ Section 325 of the *Fair Work Act 2009*

⁴ Section 326 of the *Fair Work Act 2009*

- ▶ within 6 months of the apprentice starting the stage of the apprenticeship; or
- ▶ within 3 months of the apprentice starting the training

whichever happens later.

If there are still fees outstanding at this time the employer will need to pay them to the RTO.

My apprentice has had some of their training costs paid by the Government. Do I have to reimburse them the whole amount, or just the balance?

Just the balance after any Government payments or fee reductions (fees may be reduced in some circumstances, for example if the apprentice holds a Health Care Card). The model provisions say that training costs are to be 'reimbursed' to the apprentice or paid to the RTO. Practically, the apprentice will not need to be reimbursed for costs that they are not liable to pay.

What is a textbook?

A 'textbook' is not defined in the model provisions.

An employer is only required to reimburse the apprentice for the cost of 'prescribed textbooks.' It's up to the RTO to define which textbooks are required for a particular course or unit and to clarify whether particular materials, such as module workbooks, are considered a 'prescribed textbook.'

Fees charged by RTOs may already incorporate the cost of textbooks or other course materials.

What is included in 'fees?'

The provisions say 'all fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks' are to be reimbursed or paid by the employer.

Fees for training are set and determined by the RTO. Depending on the RTO, the fees may include:

- ▶ the costs for providing the training
- ▶ course and assessment materials
- ▶ built in costs for textbooks
- ▶ any other components determined by the RTO as compulsory costs related to the training.

Any compulsory fees or charges relating to the training must be paid by the employer. This may include items that may be invoiced for separately from the course fees, however described (this will need to be assessed on a case by case basis).

Discretionary charges that are not part of the fee for providing the training, such as photocopying cards, parking or extra materials, do not need to be paid unless agreed by the employer.

Examples

Daniel is a second stage metal fabrication apprentice. He gives his employer an invoice from his RTO for \$900, consisting of a \$600 'TAFE Fee' and 'course related charges' of \$300.

Daniel's employer questions the RTO about the 'course related charges' and is told they are compulsory charges for photocopying and materials used in training for Daniel's course.

As it is a compulsory charge relating to Daniel's training, Daniel's employer must reimburse him, or pay the RTO, the \$900 including the \$300 'course related charges.'

Brittany is a third stage hairdressing apprentice. She wants to complete some extra tuition at her RTO which includes using additional materials.

The RTO charges her \$150 for the materials used. As this was not a compulsory charge relating to Brittany's training, her employer is not required to reimburse her or pay the \$150.

Do these provisions apply to school-based apprentices?

Generally, yes.

The provisions don't exclude school-based apprentices and school-based apprentices will generally be entitled to, pro-rata, the other terms and conditions of the relevant award.

Where can I get further information?

For more information about awards and entitlements for apprentices, visit our website at www.fairwork.gov.au or call us on 13 13 94.

For more information on apprenticeships and traineeships you can visit [Australian Apprenticeships](#) or call them on 13 38 73.

The relevant state and territory training authorities can also provide assistance.

- ▶ [Education and Training Directorate - ACT](#) on (02) 6205 8555
- ▶ [Australian Apprenticeships and Traineeships Centre NSW](#) on 13 28 11
- ▶ [Apprenticeships and Traineeships - Department of Business - Northern Territory](#) on (08) 8901 1357
- ▶ [Apprenticeships Info - Queensland](#) on 1800 210 210
- ▶ [Apprenticeships and Traineeships - South Australia](#) on 1800 673 097
- ▶ [Skills Tasmania](#) on 1800 655 846
- ▶ [Further Education and Training Victoria](#) on (03) 9651 9999
- ▶ [Training WA](#) on 13 19 54

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