



AUSTRALIAN CAPITAL TERRITORY

# Vocational Education and Training Act 1995

No. 37 of 1995

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AUSTRALIAN CAPITAL TERRITORY

# Vocational Education and Training Act 1995

No. 37 of 1995

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## An Act relating to vocational education and training

*[Notified in ACT Gazette S266: 31 October 1995]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Vocational Education and Training Act 1995*.

#### Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

#### Objects

3. The objects of this Act are—

- (a) to provide effective and efficient mechanisms for the planning, funding, co-ordination and evaluation of vocational education and training;
- (b) to regulate vocational education and training in the Territory;
- (c) to support quality assurance and best management practices in relation to all aspects of vocational education and training; and
- (d) within the community, to encourage an awareness of the need for, and to promote the development of, vocational education and training that is relevant to industry.

### Interpretation

4. (1) In this Act, unless the contrary intention appears—

“accreditation” means accreditation of vocational education and training courses under Division 1 of Part V;

“accredited course” means a sequence of vocational education and training that is accredited under this Act or under a corresponding law of a State or another Territory;

“ANTA” means the Australian National Training Authority established by the ANTA Act;

“ANTA Act” means the *Australian National Training Authority Act 1992* of the Commonwealth;

“approved training” means a sequence of vocational education and training that is the subject of a determination in force under section 25;

“approved training agreement” means a training agreement approved by the Authority under paragraph 30 (2) (a);

“approved variation” means a variation of an approved training agreement—

- (a) approved by the Authority under paragraph 36 (2) (a); or
- (b) made by the Authority under section 37;

“Authority” means the Vocational Education and Training Authority established by section 5;

“Council” means the Accreditation and Registration Council established by section 12;

“determined fee” means the fee determined under section 67 for the purposes of the provision in which the expression occurs;

“employer” means the person who is obliged under a training agreement to employ the trainee;

“federal award” means—

- (a) an award or order that has been reduced to writing under subsection 143 (1) of the *Industrial Relations Act 1988* of the Commonwealth;
- (b) an enterprise flexibility agreement within the meaning of that Act; or
- (c) a certified agreement within the meaning of that Act;

“industrial award” means—

- (a) a federal award; or
- (b) an award, determination or order made by a prescribed person, tribunal or body under a prescribed law of the Territory;

“Joint Industry Training Council” means the body corporate known as the Joint Industry Training Council Incorporated or any of its successors;

“NVETS Statement” means the statement (a copy of which is set out in the ANTA Act) entitled “A National Vocational Education and Training System” agreed on by the Commonwealth, the States, the Territory and the Northern Territory and published on 21 July 1992;

“prescribed vocation” means a trade or other vocation that is the subject of a determination in force under section 26;

“registered provider” means a vocational education and training provider who is registered under paragraph 19 (1) (a);

“registration” means registration of vocational education and training providers under Division 2 of Part V;

“relevant body” means the Authority or the Council, as the case requires;

“trade” means a trade for the purposes of an industrial award;

“Trades and Labour Council” means the body corporate known as the Trades and Labour Council of the Australian Capital Territory Incorporated;

“trainee” means the person who is obliged under a training agreement to undertake training;

“training agreement” means a written agreement between a trainee and his or her employer, the terms of which are in accordance with the terms determined by the Authority under section 33.

(2) In this Act, a reference to varying a training agreement shall be read as including a reference to—

- (a) shortening or extending the duration of the agreement;
- (b) suspending the operation of the agreement for a specified period;
- (c) standing down the trainee for a specified period; or

- (d) terminating the agreement.

## **PART II—VOCATIONAL EDUCATION AND TRAINING AUTHORITY**

### **Establishment**

- 5.** The Vocational Education and Training Authority is established.

### **Functions**

- 6. (1)** The Authority has the following functions:
  - (a) to advise the Minister on matters relating to vocational education and training generally, including adult and community education;
  - (b) to advise the Minister, in consultation with industry, in relation to policies and priorities for vocational education and training in the Territory that are consistent with the NVETS Statement;
  - (c) to develop a strategic plan for vocational education and training that is both relevant to industry and consistent with the NVETS Statement, and to co-ordinate and monitor the implementation of that plan;
  - (d) to advise the Minister in relation to priorities for, and allocation of, funds for vocational education and training in the Territory;
  - (e) to manage specified funding programs for vocational education and training and to monitor the use of funds for vocational education and training in the Territory;
  - (f) to provide programs and services to support vocational education and training in the Territory;
  - (g) to administer training agreements;
  - (h) in association with the Council, to facilitate recognition and quality assurance in the provision of vocational education and training;
  - (j) to promote vocational education and training generally throughout the community;
  - (k) to promote equity in access to, and participation in, vocational education and training;
  - (m) to foster co-operation between public and private sector providers of vocational education and training and to encourage private industry to participate in the provision of vocational education and training;
  - (n) to undertake research in relation to vocational education and training in the Territory and the surrounding region;
  - (p) to inquire into and provide advice to the Minister on matters referred to the Authority by the Minister in relation to vocational education and training in the Territory;

(q) such other functions as are conferred on the Authority by or under this Act or another law of the Territory.

(2) Where the Authority is nominated as the State training agency for the Territory under section 9, in addition to the functions listed in subsection (1), the Authority has the following functions:

- (a) to provide policy advice and information to ANTA to assist ANTA in the development of national policies and priorities for vocational education and training;
- (b) to assist ANTA in the development of a draft National Strategic Plan in accordance with the NVETS Statement;
- (c) to develop, in conjunction with ANTA, an annual State Training Profile for the Territory in accordance with the NVETS Statement;
- (d) to manage or monitor, as appropriate, national programs and national projects under the ANTA Act within the Territory;
- (e) to advise ANTA in relation to priorities for, and allocation of, funds for vocational education and training in the Territory;
- (f) to ensure that the management of vocational education and training in the Territory (including the planning, regulation and provision of public and private training) is in accordance with the National Strategic Plan determined under the NVETS Statement and the State Training Profile for the Territory agreed under that Statement;
- (g) to monitor the use of funds for vocational education and training in the Territory against the State Training Profile for the Territory;
- (h) to provide an annual report to ANTA on the performance of the Authority as the State training agency for the Territory in accordance with the NVETS Statement;
- (j) to provide annually to ANTA an audited statement of the funds for vocational education and training allocated by ANTA to the Authority under the NVETS Statement.

### **Consultation**

7. In the performance of its functions, the Authority shall consult with relevant industry training advisory boards, employee and employer associations, and such other persons or bodies as it considers necessary.

### **Annual report**

8. (1) The Authority shall, after each calendar year, furnish to the Minister for presentation to the Legislative Assembly a report relating to the operations of the Authority during that year.

(2) A report shall include the following:

- (a) an account of the implementation of the State Training Profile for the Territory agreed under the NVETS Statement, including a performance evaluation;
- (b) particulars of any directions under subsection 50 (1) given to the Authority by the Minister during the period to which the report relates;
- (c) a statement by the Authority indicating how effect has been given to those directions;
- (d) an audited statement of the Authority's accounts.

### **State training agency**

9. For the purposes of the definition of "State training agency" in subsection 4 (1) of the ANTA Act, the Minister may nominate the Authority as the State training agency for the Territory.

## **PART III—FUNCTIONS OF AUSTRALIAN NATIONAL TRAINING AUTHORITY**

### **Conferral of functions on ANTA**

10. ANTA has the functions, in relation to the Territory, that are expressed to be conferred on it by the ANTA Act.

### **Powers of ANTA**

11. In the Territory, ANTA has the power to do all things necessary or convenient to be done in the performance of its functions.

## **PART IV—ACCREDITATION AND REGISTRATION COUNCIL**

### **Establishment**

12. The Accreditation and Registration Council is established.

### **Functions**

13. The Council has the following functions:

- (a) to advise the Minister on matters relating to the accreditation of vocational education and training courses and the registration of vocational education and training providers;
- (b) to accredit vocational education and training in schools and the vocational education and training sector, whether provided in the Territory or elsewhere;
- (c) to accredit courses in the higher education sector, including but not limited to vocational education and training courses, whether provided in the Territory or elsewhere;
- (d) to register vocational education and training providers;

- (e) to promote credit transfer and articulation arrangements between vocational education and training courses;
- (f) to promote the recognition of prior learning as credit towards vocational education and training qualifications and as a means of obtaining such qualifications without further study;
- (g) to promote assessment practices by vocational education and training providers that are reliable, fair and flexible;
- (h) in association with the Authority, to facilitate recognition and quality assurance in the provision of vocational education and training;
- (j) to ensure the consistency of qualifications obtained as a result of accredited vocational education and training provided in the Territory;
- (k) to promote consistent national standards in relation to the accreditation of vocational education and training courses, the registration of vocational education and training providers and the issue of qualifications on completion of vocational education and training courses;
- (m) to co-ordinate and monitor the implementation of national agreements in relation to the accreditation of vocational education and training courses and the registration of vocational education and training providers and, for that purpose, to liaise with ANTA as appropriate;
- (n) to establish, as appropriate, links with other organisations and bodies that maintain systems for the recognition of vocational education and training courses and the registration of vocational education and training providers;
- (p) to keep under review the system for the accreditation of vocational education and training courses and the registration of vocational education and training providers in the Territory;
- (q) to inquire into and provide advice to the Minister on matters referred to the Council by the Minister in relation to the accreditation of vocational education and training courses and the registration of vocational education and training providers in the Territory.

**Authority's views to be taken into account**

**14.** In considering a matter, the Council shall have regard to any views the Authority may have in relation to that matter.

**Annual report**

**15. (1)** The Council shall, after each calendar year, furnish to the Minister for presentation to the Legislative Assembly a report relating to the operations of the Council during that year.

**(2)** A report shall include—

- (a) particulars of any directions under subsection 50 (1) given to the Council by the Minister during the period to which the report relates; and
- (b) a statement by the Council indicating how effect has been given to those directions.

**PART V—ACCREDITATION OF COURSES AND REGISTRATION OF TRAINERS***Division 1—Accreditation of courses***Application**

**16. (1)** A person who develops or provides a vocational education and training course may apply to the Council for accreditation of the course.

**(2)** An application shall be—

- (a) in a form approved by the Council; and
- (b) accompanied by the determined fee.

**Accreditation**

**17. (1)** On receipt of an application in accordance with section 16, the Council shall—

- (a) accredit the course, subject to such conditions (if any) as the Council thinks necessary; or
- (b) refuse to accredit the course.

**(2)** In making a decision under subsection (1), the Council shall have regard to the following:

- (a) the purpose and level of the course;
- (b) the curriculum and assessment methods of the course;
- (c) the qualifications (if any) proposed to be awarded on successful completion of the course;
- (d) the likelihood of the course achieving its purpose;
- (e) any relevant competency standards endorsed by a body recognised by the Council for that purpose;
- (f) any views that relevant industry, professional or academic bodies may have about the course.

(3) A course remains accredited for the period (not exceeding 5 years) determined by the Council.

### ***Division 2—Registration of providers***

#### **Application**

**18. (1)** A vocational education and training provider may apply to the Council for registration.

(2) An application shall be—

- (a) in a form approved by the Council; and
- (b) accompanied by the determined fee.

#### **Registration**

**19. (1)** On receipt of an application in accordance with section 18, the Council shall—

- (a) register the applicant, subject to such conditions (if any) as the Council thinks necessary; or
- (b) refuse to register the applicant.

(2) In making a decision under subsection (1), the Council shall have regard to the accredited courses that the applicant proposes to provide, and any conditions to which the accreditation of those courses is subject.

(3) The Council shall not register an applicant unless satisfied that—

- (a) the facilities and equipment proposed to be used to deliver those courses are suitable;
- (b) the qualifications, knowledge and skills of the teachers, trainers and assessors proposed to deliver those courses are appropriate;
- (c) the financial safeguards proposed to protect the interests of fee-paying students are adequate; and
- (d) the applicant's policies and practices are consistent with responsible and ethical conduct.

(4) A provider remains registered for the period (not exceeding 5 years) determined by the Council.

#### **Cancellation if criteria no longer satisfied**

**20. (1)** Where the Council believes on reasonable grounds that a registered provider no longer satisfies a criterion specified in paragraph 19 (3) (a), (b), (c) or (d), the Council shall give the provider notice in writing—

- (a) stating that the Council proposes to cancel the provider's registration for that reason;
- (b) stating the facts and circumstances on which the Council's belief is based; and

(c) inviting the provider, within 28 days after the date of the notice, to show cause why the registration should not be cancelled.

(2) After the expiration of 28 days after the date of the notice, the Council may cancel the provider's registration for the reason mentioned in subsection (1).

(3) In making a decision under subsection (2), the Council shall have regard to any explanation provided in accordance with paragraph (1) (c) as to why the registration should not be cancelled.

### **Cancellation on provider's request**

21. The Council shall cancel a provider's registration on the written request of the provider.

## ***Division 3—Miscellaneous***

### **Registers**

22. (1) The Council shall keep a register of each course that is accredited under Division 1.

(2) The Council shall keep a register of each provider who is registered under Division 2.

### **False advertising**

23. (1) A person shall not advertise or otherwise hold out a vocational education and training course that is not accredited under Division 1 as being so accredited.

(2) A person who is not registered under Division 2 shall not advertise or otherwise hold himself or herself out as being so registered.

Penalty:

- (a) if the offender is a natural person—30 penalty units;
- (b) if the offender is a body corporate—150 penalty units.

### **Employers not to be taken to be providing courses**

24. For the purposes of this Part, an employer shall not be taken to be providing a vocational education and training course merely because the employer conducts training for his or her employees.

## **PART VI—TRAINING**

### ***Division 1—Approved training and prescribed vocations***

#### **Determination of approved training**

25. The Authority may determine in writing that a sequence of vocational education and training is approved training for the purposes of this Act.

### **Determination of prescribed vocations**

**26.** The Authority may determine in writing that a trade or other vocation is, or is no longer, a prescribed vocation for the purposes of this Act.

### **Publication in *Gazette***

**27.** The Authority shall, from time to time, publish in the *Gazette* lists of the following:

- (a) approved training;
- (b) prescribed vocations.

### ***Division 2—Conduct of approved training***

#### **Training agreements to be approved**

**28. (1)** A person shall not undertake any approved training under a training agreement unless the agreement has been approved by the Authority.

**(2)** Despite subsection (1), where—

- (a) a person undertakes approved training under a training agreement that has been lodged for approval but has not yet been approved; and
- (b) the Authority subsequently approves the agreement;

that training shall be deemed to have been undertaken under the approved agreement.

#### **Employer to conduct training under approved agreement**

**29.** An employer shall not train an employee for the purpose of enabling the employee to become qualified in a prescribed vocation except under an approved training agreement.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

#### **Approval of training agreements**

**30. (1)** Application for approval of a training agreement shall be made by the employer and the trainee jointly lodging with the Authority a copy of the agreement signed by both the employer and the trainee.

**(2)** The Authority shall, on receipt of a training agreement lodged in accordance with subsection (1)—

- (a) approve the agreement, subject to such conditions (if any) as the Authority thinks necessary; or
- (b) refuse to approve the agreement.

(3) The Authority shall not approve a training agreement unless satisfied that—

- (a) the facilities, equipment and training methods proposed to be used for the approved training are suitable;
- (b) the qualifications, knowledge and skills of the person proposed to deliver the approved training are appropriate;
- (c) the person proposed to deliver the approved training conducts himself or herself in a manner appropriate for a person responsible for the delivery of training; and
- (d) the employer is likely to comply with the relevant industrial award.

### **Qualifications**

31. Where—

- (a) a trainee has completed approved training under an approved training agreement; or
- (b) the Authority is satisfied that a person who has not completed approved training under an approved training agreement has acquired the relevant knowledge and skills;

the Authority may issue a qualification to the trainee or person.

### **Travelling expenses**

32. (1) Where a trainee is required to attend at a college or other place outside the Territory for the purpose of undertaking approved training, the trainee is entitled to be paid by the Territory—

- (a) the determined amount in respect of travelling expenses incurred by the trainee in connection with that attendance; and
- (b) an allowance at the determined rate in respect of any period during which the trainee is necessarily absent overnight from his or her normal place of living.

(2) In subsection (1)—

“determined” means determined in writing by the Chief Executive.

### ***Division 3—Training agreements***

#### **Determination of terms**

33. Subject to section 34, the Authority shall determine in writing the terms to be included in training agreements.

**Standard terms**

**34. (1)** Subject to any approved variation, an employer's obligations under a training agreement shall include the following:

- (a) to employ the trainee;
- (b) to ensure that the conditions of the trainee's employment are consistent with the relevant industrial award and the *Industrial Relations Act 1988* of the Commonwealth;
- (c) to conduct the approved training specified in the agreement;
- (d) to use facilities, equipment and training methods that are suitable for the approved training;
- (e) to ensure that the trainee is adequately supervised while undertaking the approved training at the trainee's place of employment or at any other place the trainee is required to attend in the course of his or her employment;
- (f) to allow the trainee to undertake the approved training at any place determined by the Authority;
- (g) to advise the Authority of any change in the employer's circumstances as a result of which the employer is unable to conduct the approved training in accordance with the training agreement.

**(2)** Subject to any approved variation, a trainee's obligations under a training agreement shall include the following:

- (a) to comply with the requirements of the approved training specified in the agreement;
- (b) to maintain satisfactory progress while undertaking the approved training;
- (c) to behave in a reasonable manner while undertaking the approved training.

**(3)** A training agreement shall include a provision specifying the date on which (subject to any approved variation) the obligations of the parties under the agreement cease.

**(4)** A training agreement may include a period of probation (the length of which shall be determined by the Authority under section 33) during which either party to the agreement may terminate the agreement without loss or penalty.

**Effect of varying approved training agreements**

**35.** A variation of an approved training agreement has no effect unless it is an approved variation.

**Authority may approve variations**

**36. (1)** Application for approval for the variation of an approved training agreement may be made to the Authority by either party or jointly by both parties to the agreement.

**(2)** The Authority shall, on receipt of an application under subsection (1)—

- (a) approve the variation sought; or
- (b) refuse to approve it.

**(3)** The Authority shall approve a variation sought jointly by both parties unless he or she believes on reasonable grounds that—

- (a) the training that would be conducted under the agreement if it were varied as sought would not be in accordance with the relevant approved training; or
- (b) the variation sought would adversely affect the provision of the relevant approved training.

**Authority may make variations**

**37.** Where the Authority is advised by an employer of a change in the employer's circumstances as a result of which the employer is unable to conduct the approved training in accordance with the approved training agreement, the Authority may vary the agreement.

**PART VII—DISAGREEMENTS AND DISPUTES****Disagreement with decision of Council or Authority**

**38. (1)** Where—

- (a) an applicant for—
  - (i) accreditation of a course, or registration as a provider, under Part V; or
  - (ii) approval of a training agreement, approval of a variation of a training agreement, or issue of a qualification, under Part VI;

disagrees with the decision of the relevant body in relation to the application; or

- (b) a party to a training agreement that has been varied under section 37 disagrees with the decision of the relevant body in relation to the variation;

that applicant or party may, within 14 days after being notified of the decision, request that the disagreement be referred to a committee established by the relevant body under section 54 for resolution.

(2) Within 28 days after a relevant body receives a request under subsection (1)—

- (a) the relevant body shall comply with the request;
- (b) the committee to whom the matter is referred shall report back to the relevant body on the outcome of its attempt to resolve the disagreement; and
- (c) the relevant body shall notify the person who requested the referral of the outcome of that attempt.

(3) If the committee has been able to resolve the disagreement, the relevant body shall (if necessary) revoke its original decision and substitute a decision in accordance with the agreement reached.

(4) If the committee has been unable to resolve the disagreement, the original decision stands.

### **Disputes between employers and trainees**

**39. (1)** Where a dispute arises between the parties to an approved training agreement, either party may request that the dispute be referred to a committee established by the Authority under section 54 for resolution.

(2) Within 28 days after the Authority receives a request under subsection (1)—

- (a) the Authority shall comply with the request; and
- (b) the committee to whom the matter is referred shall report back to the Authority on the outcome of its attempt to resolve the dispute.

(3) If the committee has been unable to resolve the dispute, the Authority may resolve it by—

- (a) making a finding of fact in relation to any matter concerning the training agreement;
- (b) varying the agreement; or
- (c) giving directions to a party to the agreement incidental to the exercise of a power under paragraph (a) or (b).

## **PART VIII—ADMINISTRATION OF AUTHORITY AND COUNCIL**

### ***Division 1—Membership of Authority and Council***

#### **Membership of Authority**

**40.** The Authority shall consist of the following members:

- (a) a Chairperson;
- (b) 2 persons appointed, after consultation with the Trades and Labour Council, to represent the interests of employees;

- (c) 2 persons appointed, after consultation with employer organisations, to represent the interests of employers, one only of whom shall be appointed to represent the interests of public sector employers;
- (d) the Director of the Canberra Institute of Technology;
- (e) 1 person appointed to represent the interests of private providers of vocational education and training;
- (f) 1 person who in the opinion of the Minister is of good standing in the community;
- (g) 1 person appointed, after consultation with the Joint Industry Training Council, to represent the interests of industry training advisory boards;
- (h) 1 person appointed to represent the interests of the A.C.T. Council of Parents & Citizens Associations Inc.;
- (j) the Chief Executive.

### **Membership of Council**

**41.** The Council shall consist of the following members:

- (a) a Chairperson;
- (b) 4 persons who have expertise in vocational education and training;
- (c) 1 person appointed, after consultation with employer organisations, to represent the interests of employers;
- (d) 1 person appointed, after consultation with the Trades and Labour Council, to represent the interests of employees;
- (e) 1 person appointed, after consultation with the Joint Industry Training Council, to represent the interests of industry training advisory boards;
- (f) a person nominated by the Authority to represent the interests of the Authority.

### ***Division 2—Members' terms and conditions***

#### **Terms of appointment**

**42. (1)** A member of a relevant body, other than the Director of the Canberra Institute of Technology and the Chief Executive—

- (a) shall be appointed in writing by the Minister; and
- (b) holds office for the period (not exceeding 5 years) specified in the instrument of appointment.

**(2)** An appointed member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

### **Remuneration and allowances**

**43. (1)** Subject to subsection (2), an appointed member of a relevant body shall be paid such remuneration and allowances as are determined in writing by the Minister.

**(2)** An appointed member who is a public servant is not entitled to be paid remuneration under subsection (1).

### **Leave of absence**

**44.** The Minister may grant leave of absence to an appointed member of a relevant body on such terms and conditions as to remuneration or otherwise as the Minister determines.

### **Disclosure of interests**

**45. (1)** A member of a relevant body who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the relevant body shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the relevant body.

**(2)** A disclosure shall be recorded in the minutes of the meeting and, unless the relevant body determines otherwise, the member shall not—

- (a)** be present during any deliberation of the relevant body with respect to that matter; or
- (b)** take part in any decision of the relevant body with respect to that matter.

**(3)** A member referred to in subsection (2) shall not—

- (a)** be present during any deliberation of the relevant body for the purpose of considering whether to make a determination under that subsection in relation to that member; or
- (b)** take part in the making by the relevant body of such a determination.

**(4)** A member of a relevant body is not to be taken to have an interest in a matter only because of his or her office as member.

### **Resignation**

**46.** An appointed member of a relevant body may resign his or her office by writing signed by the member and delivered to the Minister.

### **Termination of appointment**

**47. (1)** The Minister may terminate the appointment of a member of a relevant body at any time.

**(2)** The Minister shall terminate the appointment of a member of a relevant authority if the member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors;
- (b) is absent, except on leave granted under section 44, from 3 consecutive meetings of the relevant body;
- (c) fails, without reasonable excuse, to comply with an obligation imposed by section 45; or
- (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer.

### **Acting appointments**

**48. (1)** The Minister may appoint a person to act as an appointed member of a relevant body—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

**(2)** A person appointed to act as the member during a vacancy in the office of the member shall not so act continuously for more than 12 months.

**(3)** Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

### ***Division 3—Powers and Procedures***

#### **Powers**

**49.** A relevant body has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

#### **Ministerial control**

**50. (1)** The Minister may, in writing, give a relevant body directions in relation to the performance or exercise of its functions or powers.

**(2)** A relevant body shall comply with any direction given to it under subsection (1).

### **Delegation**

**51. (1)** A relevant body may, either generally or as otherwise provided by resolution, delegate the performance or exercise of a function or power of the relevant body to—

- (a) the Chairperson, or any other member, of the relevant body;
- (b) a committee established by the relevant body under section 54;
- (c) a member of the staff of the relevant body; or
- (d) a prescribed person or body.

**(2)** A delegation of a function or power under this section may be revoked by resolution of the relevant body (whether or not constituted by the persons constituting the relevant body at the time the function or power was so delegated).

**(3)** Section 30 of the *Interpretation Act 1967* applies in relation to a delegation under this section as if the relevant body were a person.

**(4)** A certificate signed by the Chairperson of a relevant body stating any matter with respect to a delegation of a function or power by the relevant body under this section is evidence of that matter.

**(5)** A document purporting to be a certificate mentioned in subsection (4) shall, unless the contrary intention is established, be deemed to be such a certificate and to have been duly given.

### **Convening meetings**

**52. (1)** The Chairperson of a relevant body shall convene such meetings of the relevant body as the Chairperson considers necessary for the performance of its functions.

**(2)** Where the Chairperson of a relevant body proposes to convene a meeting, the Chairperson shall, not later than 7 days before the date of the proposed meeting, give to each member of the relevant body a notice in writing specifying—

- (a) the date, time and place of the meeting; and
- (b) the matters to be considered at the meeting.

### **Procedure at meetings**

**53. (1)** The Chairperson of a relevant body shall preside at all meetings of the relevant body at which the Chairperson is present.

**(2)** If the Chairperson is not present at a meeting, the members present shall elect one of their number to preside at the meeting.

**(3)** At a meeting of the Authority, 6 members including—

- (a) 1 of the members referred to in paragraph 40 (1) (b); and
- (b) 1 of the members referred to in paragraph 40 (1) (c);

constitute a quorum.

(4) At a meeting of the Council, 5 members including—

- (a) the member referred to in paragraph 41 (1) (c); and
- (b) the member referred to in paragraph 41 (1) (d);

constitute a quorum.

(5) Questions arising at a meeting of a relevant body shall be decided by a majority of the votes of members present and voting.

(6) The member presiding at a meeting of a relevant body has a deliberative vote only.

(7) In the event of an equality of votes on a question, the question shall be reconsidered at a time and place fixed by the member presiding.

(8) Subject to section 45 and this Division, the member presiding at a meeting of a relevant body may determine the procedure to be followed at or in connection with the meeting.

(9) A relevant body shall keep a written record of its proceedings.

#### *Division 4—Committees*

##### **Establishment**

**54.** A relevant body may establish such committees as it thinks necessary to assist the relevant body in the performance of its functions, and may dissolve such committees.

##### **Performance of functions**

**55. (1)** Subject to any determination under subsection (2) by the relevant body mentioned in that subsection, a committee may determine the procedure to be followed in relation to its meetings.

(2) The relevant body that establishes a committee may determine—

- (a) the manner in which the committee is to perform its functions; and
- (b) the procedure to be followed in relation to meetings of the committee, including matters with respect to—
  - (i) the convening of meetings;
  - (ii) the quorum for meetings (including requirements that particular members be present);
  - (iii) the member of the committee who is to preside at meetings;
  - (iv) the manner in which questions arising at a meeting are to be decided; and
  - (v) the keeping of records of its proceedings.

### **Membership**

**56. (1)** A committee established under section 54 by a relevant body shall consist of such persons as are appointed by the relevant body.

**(2)** A committee may consist—

- (a) wholly of members of the relevant body; or
- (b) partly of members of the relevant body and partly of other persons.

**(3)** A member of a committee may resign his or her office by writing signed by the member and delivered to the relevant body.

**(4)** The relevant body may terminate the appointment of a member of a committee at any time.

### **Expenses of members**

**57. (1)** Subject to subsection (2), a member of a committee established under section 54 is not entitled to be paid in respect of the performance of the member's functions.

**(2)** The Territory shall reimburse a member for expenses reasonably incurred by the member in the performance of the member's functions.

**(3)** Subsection (1) does not apply to a member who is also a member of the relevant body that established the committee.

### ***Division 5—Staff***

#### **Staff of the Authority and the Council**

**58. (1)** The Authority may make arrangements with the Chief Executive for the use of the services of public servants in the administrative unit under the Chief Executive's control.

**(2)** The Council may make arrangements with the Authority for the use of the services of public servants who are the subject of an arrangement under subsection (1).

**(3)** The *Public Sector Management Act 1994* applies in relation to the management by the Authority and the Council of public servants who are the subject of an arrangement under this section.

## **PART IX—OFFICIAL VISITS TO PREMISES BY AUTHORITY AND COUNCIL**

### **Official visits**

**59. (1)** A member of a relevant body or a member of the staff of a relevant body may give—

- (a) if the body is the Authority—an employer who is conducting approved training under a training agreement; or
- (b) if the body is the Council—a registered provider;

notice in writing that the member or staff member proposes to visit premises at which—

- (c) the employer is conducting that training; or
- (d) the registered provider is providing vocational education and training courses.

(2) A notice under subsection (1) shall—

- (a) specify the address of the premises proposed to be visited;
- (b) specify the day and time of the proposed visit, being a day and time when the employer or provider normally conducts business on the premises; and
- (c) be given to the employer or provider at least 7 days before the proposed visit.

(3) The member or staff member who gave the notice under subsection (1) may, on the day and at the time specified in the notice—

- (a) enter the premises specified in the notice;
- (b) observe any approved training being conducted, or any vocational education and training courses being provided, on the premises;
- (c) request the employer or provider to provide information concerning—
  - (i) approved training conducted on the premises; or
  - (ii) vocational education and training courses provided on the premises; or
- (d) request the employer or provider to produce any document in the possession of the employer or provider containing information relating to—
  - (i) approved training conducted on the premises; or
  - (ii) vocational education and training courses provided on the premises.

### **Identity cards**

**60. (1)** The Authority shall issue to a member of a relevant body or a member of the staff of a relevant body an identity card that specifies the member's or staff member's name and office, and on which appears a recent photograph of the member or staff member.

(2) A member or staff member who enters premises under paragraph 59 (3) (a) is not authorised to remain on the premises if, on request by the occupier of the premises, the employer or the provider, the member or staff member does not show his or her identity card to the person who made the request.

(3) Upon ceasing to be a member of a relevant body or a member of the staff of a relevant body, a person shall not, without reasonable excuse, fail to return his or her identity card to the relevant body.

Penalty for contravention of subsection (3): 1 penalty unit.

### **Obstructing official visits**

**61.** If an employer or a registered provider—

- (a) obstructs or hinders a member of a relevant body or a member of staff of a relevant body when he or she is entering premises under paragraph 59 (3) (a) or observing the conduct of training or the provision of a course under paragraph 59 (3) (b);
- (b) refuses to provide information, or provides information that the employer or provider knows is false or misleading, in response to a request under paragraph 59 (3) (c); or
- (c) refuses to produce a document, or provides a document that the employer or provider knows contains false or misleading information, in response to a request under paragraph 59 (3) (d);

the relevant body may—

- (d) if the body is the Authority—vary any approved training agreement to which the employer is a party; or
- (e) if the body is the Council—cancel the provider's registration.

## **PART X—REVIEW OF DECISIONS**

### **Council's decisions**

**62.** (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Council—

- (a) under paragraph 17 (1) (a) accrediting a course subject to conditions;
- (b) under paragraph 17 (1) (b) refusing to accredit a course;
- (c) under subsection 17 (3) determining a period for which a course is to remain accredited;
- (d) under paragraph 19 (1) (a) registering a provider subject to conditions;
- (e) under paragraph 19 (1) (b) refusing to register a provider;
- (f) under subsection 19 (4) determining a period for which a provider is to remain registered;
- (g) under subsection 20 (2) cancelling the registration of a provider; or
- (h) under paragraph 61 (e) cancelling the registration of a provider.

(2) Where a decision of the kind referred to in paragraph (1) (a), (b), (c), (d), (e) or (f) is made, the Council shall give notice in writing of the decision to the applicant.

(3) Where a decision of the kind referred to in paragraph (1) (g) or (h) is made, the Council shall give notice in writing of the decision to the provider.

(4) A notice under this section shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

### **Authority's decisions**

**63. (1)** Application may be made to the Administrative Appeals Tribunal for review of a decision of the Authority—

- (a) under paragraph 30 (2) (a) approving a training agreement subject to conditions;
- (b) under paragraph 30 (2) (b) refusing to approve a training agreement;
- (c) under section 31 refusing to issue a qualification;
- (d) under paragraph 36 (2) (a) approving a variation of an approved training agreement;
- (e) under paragraph 36 (2) (b) refusing to approve a variation of an approved training agreement;
- (f) under section 37 varying an approved training agreement;
- (g) under paragraph 39 (3) (a) making a finding of fact in relation to a matter concerning a training agreement;
- (h) under paragraph 39 (3) (b) varying an approved training agreement;
- (j) under paragraph 39 (3) (c) giving directions to a party to a training agreement; or
- (k) under paragraph 61 (d) varying an approved training agreement.

(2) Where a decision of the kind referred to in paragraph (1) (a), (b) or (c) is made, the Authority shall give notice in writing of the decision to the applicant.

(3) Where a decision of the kind referred to in paragraph (1) (d), (e), (f), (g), (h), (j) or (k) is made, the Authority shall give notice in writing of the decision to the parties to the agreement.

(4) A notice under this section shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

**Modification of section 27 of Administrative Appeals Tribunal Act**

**64. (1)** This section applies in relation to a decision of the kind referred to in any of paragraphs 62 (1) (a) to (f) (inclusive) or 63 (1) (a) to (f) (inclusive).

**(2)** A person is not entitled to make application under subsection 62 (1) or 63 (1) for review of a decision—

- (a) until the period during which a request under subsection 38 (1) may be made has expired; or
- (b) if a request in accordance with subsection 38 (1) has been made, until—
  - (i) the person who made the request is notified under paragraph 38 (2) (c) of the outcome of the attempt to resolve the disagreement; or
  - (ii) the period referred to in subsection 38 (2) expires;

whichever occurs first.

**(3)** Where a request has been made in accordance with subsection 38 (1) in relation to a decision, the prescribed time for lodging an application under subsection 62 (1) or 63 (1) for review of the decision is the period commencing on the day on which the person who made the request becomes entitled under subsection (2) to make the application and ending on the 28th day after that day.

**PART XI—MISCELLANEOUS**

**Protection of members**

**65. (1)** No action or other proceeding, civil or criminal, lies against a person who is or has been—

- (a) a member of a relevant body; or
- (b) a member of a committee established by a relevant body under section 54;

in relation to an act done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this Act or another law of the Territory.

**(2)** Nothing in subsection (1) shall be taken to affect any liability that the Territory would, but for that subsection, have in respect of an act or omission mentioned in that subsection.

**Compliance with approved forms**

**66.** Strict compliance with the forms approved for the purposes of this Act is not necessary and substantial compliance, or such compliance as the circumstances of a particular case allow, is sufficient.

**Determined fees**

**67.** The Minister may, by notice in the *Gazette*, determine fees for the purposes of this Act.

**Regulations**

**68.** The Executive may make regulations for the purposes of this Act.

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**NOTE****Penalty units**

See section 33AA of the *Interpretation Act 1967*.

*[Presentation speech made in Assembly on 21 September 1995]*