

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Education, Youth and Family Services)

Vocational Education and Training Bill 2003

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Objects	2
4 Dictionary	3
5 Notes	3
6 Offences against Act—application of Criminal Code etc	3

	Page
Part 2 Vocational education and training authority	
Division 2.1 Establishment, functions and membership	
7 Establishment of authority	4
8 Functions of authority	4
9 Ministerial directions to authority	5
10 Consultation	6
11 Delegation by authority	6
12 Membership of authority	6
13 Ending appointment of authority member	7
14 Disclosure of interests by authority members	8
15 Reporting of disclosed interests to Minister	9
16 Reimbursement of authority members	9
17 Authority staff	9
18 Annual report by authority	10
Division 2.2 Proceedings of authority	
19 Calling authority meetings	10
20 Authority procedures	10
Division 2.3 Authority committees	
21 Establishment of committees	11
22 Exercise of committee functions	11
23 Membership of committees	12
24 Reimbursement for committee members	12
Part 3 Training	
25 Determination of work-related training	13
26 Approval of training contract	13
27 Application for approval	14
28 Training contracts for qualification or statement of attainment	14
29 Training must be under approved training contract	15
30 Code of practice	15
31 Party may ask for amendment	15
32 Authority may suspend, cancel or amend contract	16

		Page
Part 4	Disagreements and disputes	
33	Disagreement with decision of authority	17
34	Dispute between employer and trainee	17
Part 5	Visits to premises	
35	Visits by authority	19
36	Identity cards	20
37	Production of identity card	20
38	Obstructing visits	21
Part 6	Review of decisions	
39	Definition for pt 6	22
40	Notice of reviewable decisions	22
41	Review by AAT of reviewable decisions	22
42	Modification of Administrative Appeals Tribunal Act, s 27	22
Part 7	Miscellaneous	
43	Functions of ANTA for the ACT	24
44	False or misleading statements in applications etc	24
45	Alternative verdict for offence against s 44	25
46	Protection from liability	26
47	Determination of fees	26
48	Approved forms	26
49	Regulation-making power	26
Part 8	Transitional provisions	
50	Training contracts	27
51	Modification of pt 8's operation	27
52	Expiry of pt 8	27
Part 9	Repeals and consequential amendments	
53	Act repealed	28
54	Regulation repealed	28
55	Acts and regulations amended—sch 2	28

Contents

		Page
Schedule 1	Reviewable decisions	29
Schedule 2	Consequential amendments	31
Part 2.1	Annual Leave Act 1973	31
Part 2.2	Building and Construction Industry Training Levy Act 1999	32
Part 2.3	Electricity Safety Act 1971	32
Part 2.4	Electricity Safety Regulations 1971	33
Part 2.5	Long Service Leave Act 1976	33
Part 2.6	Payroll Tax Act 1987	34
Part 2.7	Workers Compensation Regulations 2002	35
Dictionary		36

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Education, Youth and Family Services)

Vocational Education and Training Bill 2003

A Bill for

An Act about vocational education and training, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Vocational Education and Training Act 2003*.

4 **2 Commencement**

5 This Act commences on 1 July 2003.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Objects**

9 The objects of this Act are—

- 10 (a) to provide effective and efficient mechanisms for the planning,
11 funding, coordination and evaluation of vocational education
12 and training; and
- 13 (b) to regulate vocational education and training; and
- 14 (c) to support quality assurance and best management practices for
15 vocational education and training; and
- 16 (d) to encourage awareness in the community of the need for, and
17 to promote the development of, vocational education and
18 training that is relevant to industry.

19 *Note* The *Tertiary Accreditation and Registration Act 2003* contains
20 important provisions about the quality of vocational education and
21 training, including the application of nationally agreed protocols and
22 standards.

4 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*statement of attainment*—see the *Tertiary Accreditation and Registration Act 2003*, dictionary.' means that the expression 'statement of attainment' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

5 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

6 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

1 **Part 2** **Vocational education and**
2 **training authority**

3 **Division 2.1** **Establishment, functions and**
4 **membership**

5 **7** **Establishment of authority**

6 The Vocational Education and Training Authority is established.

7 **8** **Functions of authority**

8 The authority has the following functions:

- 9 (a) to advise the Minister about vocational education and training
10 generally, including adult and community education;
- 11 (b) to advise the Minister, in consultation with industry and the
12 community, about nationally consistent policies and priorities
13 for vocational education and training;
- 14 (c) to develop a strategic plan for vocational education and
15 training that is consistent with nationally agreed strategies and
16 relevant to industry and the community, and to coordinate and
17 monitor its implementation;
- 18 (d) to advise the Minister about priorities for, and allocation of,
19 funds for vocational education and training;
- 20 (e) to manage funding programs, and to monitor the use of funds,
21 for vocational education and training;
- 22 (f) to provide programs and services to support vocational
23 education and training;
- 24 (g) to administer training contracts;

-
- 1 (h) in association with the accreditation and registration council, to
2 facilitate recognition and quality assurance in the provision of
3 vocational education and training;
- 4 (i) to promote vocational education and training generally in the
5 community;
- 6 (j) to promote equity in access to, and participation in, vocational
7 education and training;
- 8 (k) to promote cooperation between public and private providers
9 of vocational education and training and to encourage private
10 industry to provide vocational education and training;
- 11 (l) to undertake research about vocational education and training
12 in the ACT and the surrounding region;
- 13 (m) to inquire into, and advise the Minister, on vocational
14 education and training issues referred to the authority by the
15 Minister;
- 16 (n) any other function given to the authority under this Act or
17 another Territory law.

18 *Note* A provision of a law that gives an entity (including a person) a function
19 also gives the entity powers necessary and convenient to exercise the
20 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

21 **9 Ministerial directions to authority**

- 22 (1) The Minister may give the authority written directions about the
23 exercise of its functions, but not about advising the Minister or
24 reporting under the *Annual Reports (Government Agencies) Act*
25 *1995*, section 8.
- 26 (2) The authority must comply with a direction under this section.
- 27 (3) A direction under this section is a notifiable instrument.

28 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **10 Consultation**

- 2 (1) In exercising its functions, the authority may consult with relevant
3 industry, training, community, employee and employer associations.
- 4 (2) The authority may consult with any other entity it considers
5 appropriate.

6 **11 Delegation by authority**

7 The authority may delegate the exercise of its functions to—

- 8 (a) an authority member; or
9 (b) a committee of the authority; or
10 (c) an authority staff member; or
11 (d) a person prescribed under the regulations.

12 *Note 1* For the making of delegations and the exercise of delegated functions,
13 see Legislation Act, pt 19.4.

14 *Note 2* If a law authorises or requires a body to exercise a function, it may do
15 so by resolution, see Legislation Act, s 199.

16 **12 Membership of authority**

- 17 (1) The authority consists of the following members:
- 18 (a) a chairperson;
19 (b) 2 people appointed, after consultation with the trades and
20 labour council, to represent the interests of employees;
21 (c) 2 people appointed, after consultation with employer
22 organisations, to represent the interests of employers;
23 (d) 1 person who, in the Minister's opinion, represents the interests
24 of registered training organisations which are private providers
25 of vocational education and training;
26 (e) 1 person who, in the Minister's opinion, represents the interests
27 of providers of industry training advisory services;

- 1 (f) 1 person who, in the Minister's opinion, represents the interests
2 of indigenous communities;
- 3 (g) 1 person who, in the Minister's opinion, represents the interests
4 of the ACT Council of Parents & Citizens Associations Inc.;
- 5 (h) 1 other person who, in the Minister's opinion, is of good
6 standing in the community;
- 7 (i) the director of the Canberra Institute of Technology;
- 8 (j) the chief executive;
- 9 (k) the chairperson of the accreditation and registration council.
- 10 (2) The Minister must appoint the authority members (other than the
11 director of the Canberra Institute of Technology or the chief
12 executive).
- 13 *Note 1* For the making of appointments (including acting appointments), see
14 Legislation Act, div 19.3.
- 15 *Note 2* In particular, an appointment may be made by naming a person or
16 nominating the occupant of a position (see Legislation Act, s 207).
- 17 *Note 3* Certain Ministerial appointments require consultation with a Legislative
18 Assembly committee and are disallowable (see Legislation Act,
19 div 19.3.3).

20 **13 Ending appointment of authority member**

- 21 (1) The Minister must end the appointment of an authority member if
22 the Minister becomes aware that the member—
- 23 (a) has failed to comply with section 14 (Disclosure of interests by
24 authority members) without reasonable excuse; or
- 25 (b) has at any time been convicted, in Australia or elsewhere, of an
26 offence punishable by imprisonment for at least 1 year.
- 27 (2) The Minister may end the appointment of an authority member—
- 28 (a) if the member is absent from 3 consecutive meetings of the
29 authority other than on leave approved by the Minister; or

- 1 (b) for members mentioned in section 12 (1) (b) to (g)—if the
2 Minister is satisfied that the member is no longer an
3 appropriate person to represent the relevant interests; or
- 4 (c) for misbehaviour or physical or mental incapacity, if the
5 incapacity affects the exercise of the member’s functions; or
- 6 (d) if the member becomes bankrupt, applies to take the benefit of
7 any law for the relief of bankrupt or insolvent debtors,
8 compounds with creditors or makes an assignment of
9 remuneration for the benefit of creditors.

10 *Note* A person’s appointment also ends if the person resigns (see Legislation
11 Act, s 210).

12 **14 Disclosure of interests by authority members**

- 13 (1) An authority member who has a relevant interest in an issue being
14 considered, or about to be considered by the authority must, as soon
15 as practicable after the relevant facts have come to the authority
16 member’s knowledge, disclose the nature of the interest at a meeting
17 of the authority.
- 18 (2) The disclosure must be recorded in the authority’s minutes and,
19 unless the authority otherwise decides, the authority member must
20 not—
- 21 (a) be present when the authority considers the issue; or
- 22 (b) take part in a decision of the authority on the issue.
- 23 (3) Any other authority member who also has a relevant interest in the
24 issue must not—
- 25 (a) be present while the authority is considering whether to make a
26 decision under subsection (2); or
- 27 (b) take part in the decision.
- 28 (4) In this section:
- 29 *relevant interest*, in an issue, means a direct or indirect financial
30 interest in the issue.

1 **15 Reporting of disclosed interests to Minister**

2 (1) Within 14 days after the day the disclosure of an interest under
3 section 14 (1) is made, the authority chairperson must report to the
4 Minister in writing about—

5 (a) the disclosure; and

6 (b) the nature of the interest disclosed; and

7 (c) any decision by the authority under section 14 (2).

8 (2) The authority chairperson must give to the Minister, by 31 July in
9 each year, a statement that sets out the information given to the
10 Minister in reports under subsection (1) that relate to disclosures
11 made during the previous financial year.

12 (3) The Minister must give a copy of the statement to the relevant
13 committee of the Legislative Assembly within 14 days after the day
14 the Minister receives the statement.

15 (4) In this section:

16 *relevant committee* means—

17 (a) a standing committee of the Legislative Assembly nominated
18 by the Speaker for subsection (3); or

19 (b) if no nomination under paragraph (a) is in effect—the standing
20 committee of the Legislative Assembly responsible for public
21 accounts.

22 **16 Reimbursement of authority members**

23 The Territory must reimburse an authority member for expenses
24 reasonably incurred in the exercise of the member's functions.

25 **17 Authority staff**

26 (1) The authority may make arrangements with the chief executive to
27 use public servants in the administrative unit under the chief
28 executive's control.

- 1 (2) The *Public Sector Management Act 1994* applies to the management
2 by the authority of public servants the subject of an arrangement
3 under subsection (1).

4 **18 Annual report by authority**

5 A report prepared by the authority for the *Annual Reports*
6 (*Government Agencies*) Act 1995, section 8 must include, for the
7 reporting period, details of any direction under section 9 (Ministerial
8 directions to authority) given during the period and the way the
9 direction was given effect.

10 **Division 2.2 Proceedings of authority**

11 **19 Calling authority meetings**

- 12 (1) The authority meets at the times and places the authority
13 chairperson decides.
14 (2) The chairperson must ensure that authority members have
15 reasonable notice of meetings.

16 **20 Authority procedures**

- 17 (1) The authority chairperson presides at meetings of the authority.
18 (2) However, if the chairperson is absent from a meeting, the members
19 present may elect a member to preside at the meeting.
20 (3) Business may be carried out at an authority meeting only if at least
21 6 authority members are present, including—
22 (a) at least 1 of the members mentioned in section 12 (1) (b); and
23 (b) at least 1 of the members mentioned in section 12 (1) (c).
24 (4) A question arising at a meeting may be decided by a majority of the
25 votes of members present and voting.

-
- 1 (5) If the votes of the authority on a question are equally divided, the
2 decision of the member presiding is the decision of the authority on
3 the question.
- 4 (6) The authority may decide its own procedure in relation to anything
5 for which a procedure is not provided under this Act.
- 6 (7) The authority must keep minutes of its meetings.

7 **Division 2.3 Authority committees**

8 **21 Establishment of committees**

9 The authority may establish committees to help the authority in the
10 exercise of its functions.

11 **22 Exercise of committee functions**

- 12 (1) Subject to any decision of the authority under subsection (2), a
13 committee may decide its own procedures.
- 14 (2) The authority may decide—
- 15 (a) how a committee is to exercise its functions; and
- 16 (b) the procedure to be followed for meetings of the committee,
17 including—
- 18 (i) the calling of meetings; and
- 19 (ii) the number of committee members to be present at
20 meetings (including requirements that particular members
21 be present); and
- 22 (iii) the committee member who is to preside at meetings; and
- 23 (iv) how questions arising at a meeting are to be decided; and
- 24 (v) the keeping of minutes of meetings.

1 **23 Membership of committees**

2 (1) A committee consists of the people appointed by the authority.

3 *Note 1* For the making of appointments (including acting appointments), see
4 Legislation Act, div 19.3.

5 *Note 2* In particular, an appointment may be made by naming a person or
6 nominating the occupant of a position (see Legislation Act, s 207).

7 (2) A committee may consist completely or partly of authority
8 members.

9 **24 Reimbursement for committee members**

10 (1) A committee member is not entitled to be paid for the exercise of
11 the member's functions.

12 (2) However, the Territory must reimburse a committee member for
13 expenses reasonably incurred in the exercise of the member's
14 functions.

15 (3) This section does not apply to a committee member who is also an
16 authority member.

Part 3 Training

25 Determination of work-related training

- (1) The authority may, in writing, determine that a sequence of vocational education and training is work-related training for this Act.

Examples

- 1 apprenticeship
- 2 traineeship
- 3 other training in a trade or occupation

Note 1 Power given under an Act to make a statutory instrument (including a determination) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A determination is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 An amendment or repeal of a determination is also a notifiable instrument (see Legislation Act, s 46 (2)).

26 Approval of training contract

- (1) The authority may approve a training contract between an employer and another person in relation to work-related training.
- (2) Before approving a training contract, the authority must consider whether the contract complies with the form and content of any nationally agreed training contract.
- (3) Also, the authority must not approve a training contract unless satisfied that—

- 1 (a) the facilities, equipment and methods proposed to be used for
2 the training are suitable; and
- 3 (b) the qualifications, knowledge and skills of the person proposed
4 to deliver the training are appropriate; and
- 5 (c) the person proposed to deliver the training conducts himself or
6 herself in a way appropriate for a person responsible for the
7 delivery of training; and
- 8 (d) the employer is likely to comply with any relevant industrial
9 award.
- 10 (4) The authority may approve a training contract subject to conditions.
- 11 (5) In this section:
- 12 *nationally agreed training contract* means the training contract
13 agreed by the ministerial council.
- 14 *ministerial council*—see the *Tertiary Accreditation and*
15 *Registration Act 2003*, dictionary.

16 **27 Application for approval**

17 An application for approval must be made in the way required by
18 the authority.

19 *Note* If a form is approved under s 48 (Approved forms) for an application,
20 the form must be used.

21 **28 Training contracts for qualification or statement of**
22 **attainment**

23 (1) An employer and another person may enter into an approved
24 training contract for training that results in a qualification or
25 statement of attainment being issued to the other person.

26 (2) However, a contract cannot be entered into if the authority or the
27 accreditation and registration council decides that training contracts
28 cannot be entered into for the particular qualification or statement of
29 attainment.

29 Training must be under approved training contract

(1) A person commits an offence if—

- (a) the person is an employer who provides someone else with work-related training for a qualification or statement of attainment; and
- (b) there is no approved training contract between the employer and the other person.

Maximum penalty: 50 penalty units.

(2) An offence under this section is a strict liability offence.

30 Code of practice

- (1) In providing work-related training under an approved training contract, an employer must comply with the National Code of Good Practice for New Apprenticeships as in force from time to time.
- (2) The Legislation Act, section 47 (6) does not apply to this section.

Note The text of the code is available at www.newapprenticeships.gov.au.

31 Party may ask for amendment

- (1) A party to an approved training contract may ask the authority to approve an amendment of the contract.

Note If a form is approved under s 48 (Approved forms) for a request, the form must be used.

(2) The authority must—

- (a) approve the amendment requested; or
- (b) refuse to approve it.

- (3) Before approving an amendment, the authority must consider whether the contract as amended will comply with the form and content of any nationally agreed training contract.

- 1 (4) The authority must approve an amendment requested by both parties
2 unless satisfied that the amendment would adversely affect the
3 provision of the training.

4 **32 Authority may suspend, cancel or amend contract**

5 The authority may suspend or cancel approval of a training contract,
6 or amend an approved training contract—

- 7 (a) if the employer is unable to provide training under the contract
8 because of a change in the employer's circumstances; or
9 (b) if the authority is satisfied that it is in the interests of the
10 trainee to suspend or cancel the approval or amend the
11 contract; or
12 (c) in any other circumstance prescribed under the regulations.

Part 4 Disagreements and disputes

33 Disagreement with decision of authority

(1) This section applies if—

(a) an applicant for approval or amendment of a training contract under part 3 disagrees with the decision of the authority about the application; or

(b) a party to a training contract that is amended under section 31 (Party may ask for amendment) disagrees with the decision of the authority about the amendment.

(2) The applicant or party may, within 14 days after the day the applicant is notified of the decision under section 40 (Notice of reviewable decisions), ask the authority to refer the disagreement to a committee for resolution.

(3) As soon as practicable after receiving the request for referral, the authority must refer the disagreement to a committee.

(4) Within 28 days after the day the authority receives the referral, the committee must attempt to resolve the disagreement and report to the authority about the outcome.

34 Dispute between employer and trainee

(1) This section applies if a dispute about training under an approved training contract arises between the parties to the training contract.

(2) A party may ask the authority to refer the dispute to a committee.

(3) As soon as practicable after receiving the request for referral, the authority must refer the dispute to a committee.

(4) Within 28 days after the day of receiving the referral, the committee must attempt to resolve the dispute and report to the authority about the outcome.

Part 4 Disagreements and disputes

Section 34

- 1 (5) In attempting to resolve the dispute, the committee must take into
2 account any views of the accreditation and registration council on an
3 issue in dispute.
- 4 (6) If the committee does not resolve the dispute, the authority may—
- 5 (a) make a finding of fact about any matter relating to the training
6 contract; or
- 7 (b) amend the contract; or
- 8 (c) give directions to a party to the contract incidental to an action
9 under paragraph (a) or (b).

Part 5 **Visits to premises**

35 **Visits by authority**

- (1) The authority may give an employer written notice that an authority member, a staff member of the authority or a person authorised by the authority proposes to visit premises where the employer is providing, or proposes to provide, training under a training contract.
- (2) The notice under subsection (1) must—
 - (a) state the address of the premises proposed to be visited; and
 - (b) state the day and time of the proposed visit; and
 - (c) state the purpose of the visit; and
 - (d) be given to the employer at least 7 days before the day of the proposed visit.
- (3) The day and time of the proposed visit must be a day and time when the employer normally conducts business on the premises.
- (4) The member, staff member or authorised person may, on the day and at the time stated in the notice—
 - (a) enter the premises stated in the notice; or
 - (b) observe any work-related training being provided on the premises; or
 - (c) ask the employer to give information about work-related training provided, or proposed to be provided, on the premises; or
 - (d) ask the employer to produce any document in the possession of the employer containing information about work-related training provided, or proposed to be provided, on the premises.

- 1 (5) A member, staff member or authorised person may, in exceptional
2 circumstances, do a thing mentioned in subsection (4) (a) to (d)
3 without notice.

4 **Example of exceptional circumstance**

5 danger of injury to anyone's health or safety

6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 Legislation Act, s 126 and s 132).

9 **36 Identity cards**

- 10 (1) The authority may give a person who may conduct visits under this
11 part an identity card that states the person's name and position, and
12 shows—

- 13 (a) the date of issue of the card; and
14 (b) the date of expiry of the card; and
15 (c) anything else prescribed under the regulations.

- 16 (2) A person who is given an identity card commits an offence if the
17 person fails to return it to the authority as soon as practicable, but
18 within 7 days, after the day the person is asked by the authority to
19 return the card.

20 Maximum penalty: 1 penalty unit.

- 21 (3) An offence against this section is a strict liability offence.

22 **37 Production of identity card**

23 An authority member, staff member or authorised person must not
24 remain on premises entered under this part if, on request by the
25 occupier, the authority member, staff member or authorised person
26 does not produce his or her identity card.

1 **38 Obstructing visits**

- 2 (1) This section applies if the authority is satisfied that an employer—
- 3 (a) without reasonable excuse, obstructs or hinders a person
- 4 entering premises or observing training under section 35 (4) (a)
- 5 or (b) (Visits by authority); or
- 6 (b) refuses to give information, or gives information that the
- 7 employer knows is false or misleading, in response to a request
- 8 under section 35 (4) (c); or
- 9 (c) refuses to produce a document, or produces a document that
- 10 the employer knows contains false or misleading information,
- 11 in response to a request under section 35 (4) (d).
- 12 (2) The authority may suspend or cancel the approval of, or amend, any
- 13 approved training contract to which the employer is a party.

1 **Part 6** **Review of decisions**

2 **39 Definition for pt 6**

3 In this part:

4 *reviewable decision* means a decision of the authority mentioned in
5 an item in schedule 1, column 3 under a provision of this Act
6 mentioned in the item, column 2.

7 **40 Notice of reviewable decisions**

8 (1) If the authority makes a reviewable decision, the authority must give
9 written notice of the decision to each person mentioned in
10 schedule 1, column 4 in relation to the decision.

11 (2) The notice must be in accordance with the requirements of the code
12 of practice in force under the *Administrative Appeals Tribunal Act*
13 1989, section 25B (1).

14 **41 Review by AAT of reviewable decisions**

15 A person may apply in writing to the administrative appeals tribunal
16 for review of a reviewable decision.

17 **42 Modification of Administrative Appeals Tribunal Act, s 27**

18 (1) This section applies in relation to a decision to which section 33
19 (Disagreement with decision of authority) applies.

20 (2) A person is not entitled to apply under section 41 for review of a
21 decision—

22 (a) until after the end of the period when a request under
23 section 33 (2) may be made; or

24 (b) if a request under section 33 (2) has been made, until the
25 earlier of the following days:

- 1 (i) the day the person who made the request is notified of the
2 outcome of the attempt to resolve the disagreement;
- 3 (ii) the day after the end of the period mentioned in
4 section 33 (4).
- 5 (3) If a request has been made under section 33 (2) in relation to a
6 decision, the prescribed time for lodging an application with the
7 AAT is the period beginning on the day when the person who made
8 the request becomes entitled under subsection (2) (b) to make the
9 application and ending on the 28th day after that day.

ANTA may exercise, for the ACT, any function given to it under the *Australian National Training Authority Act 1992* (Cwlth).

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

(1) A person commits an offence if—

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the person does so knowing that the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading; and
- (c) the statement is made—
 - (i) in, or in relation to, an application for approval or amendment of a training contract; or
 - (ii) in response to a request for information under section 35 (4) (c) (Visits by authority).

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (b) (i) does not apply if the statement is not false or misleading in a material particular.
- (3) Subsection (1) (b) (ii) does not apply if the omission does not make the statement misleading in a material particular.

- 1 (4) A person commits an offence if—
- 2 (a) the person makes a statement (whether orally, in a document or
- 3 in any other way); and
- 4 (b) the person is reckless as to whether the statement—
- 5 (i) is false or misleading; or
- 6 (ii) omits anything without which the statement is
- 7 misleading; and
- 8 (c) the statement is made—
- 9 (i) in, or in relation to, an application for approval or
- 10 amendment of a training contract; or
- 11 (ii) in response to a request for information under
- 12 section 35 (4) (c) (Visits by authority).
- 13 Maximum penalty: 50 penalty units.
- 14 (5) Subsection (4) (b) (i) does not apply if the statement is not false or
- 15 misleading in a material particular.
- 16 (6) Subsection (4) (b) (ii) does not apply if the omission does not make
- 17 the statement misleading in a material particular.

18 **45 Alternative verdict for offence against s 44**

- 19 (1) This section applies if, in a prosecution for an offence against
- 20 section 44 (1) (False or misleading statements in applications etc),
- 21 the trier of fact is not satisfied that the defendant is guilty of the
- 22 offence, but is satisfied beyond reasonable doubt that the defendant
- 23 is guilty of an offence against section 44 (4).
- 24 (2) The trier of fact may find the defendant not guilty of the offence
- 25 against section 44 (1) but guilty of the offence against section 44 (4)
- 26 only if the defendant has been given procedural fairness in relation
- 27 to that finding of guilt.

1 **46 Protection from liability**

2 (1) A person exercising a function under this Act does not incur civil
3 liability for an act or omission done honestly and without negligence
4 for this Act.

5 (2) Civil liability that would, apart from this section, attach to a person
6 attaches instead to the Territory.

7 **47 Determination of fees**

8 (1) The Minister may, in writing, determine fees for this Act.

9 *Note* The Legislation Act contains provisions about the making of
10 determinations and regulations relating to fees (see pt 6.3).

11 (2) A determination is a disallowable instrument.

12 *Note* A disallowable instrument must be notified, and presented to the
13 Legislative Assembly, under the Legislation Act.

14 **48 Approved forms**

15 (1) The authority may, in writing, approve forms for this Act.

16 (2) If the authority approves a form for a particular purpose, the
17 approved form must be used for that purpose.

18 *Note* For other provisions about forms, see Legislation Act, s 255.

19 (3) An approved form is a notifiable instrument.

20 *Note* A notifiable instrument must be notified under the Legislation Act.

21 **49 Regulation-making power**

22 The Executive may make regulations for this Act.

23 *Note* Regulations must be notified, and presented to the Legislative
24 Assembly, under the Legislation Act.

1 **Part 8** **Transitional provisions**

2 **50 Training contracts**

- 3 (1) An agreement that was an approved training agreement under the
4 *Vocational Education and Training Act 1995* immediately before
5 1 July 2003 is taken to be approved as a training contract under
6 section 26 (Approval of training contract).
- 7 (2) If a suspension of approval of the agreement or an amendment of
8 the agreement is in force immediately before 1 July 2003, the
9 suspension or amendment has effect as if the approval had been
10 suspended, or the agreement amended, under part 3 (Training).

11 **51 Modification of pt 8's operation**

12 The regulations may modify the operation of this part to make
13 provision in relation to any matter that, in the Executive's opinion,
14 is not, or is not adequately, dealt with in this part.

15 **52 Expiry of pt 8**

16 This part expires on 30 June 2004.

1 **Part 9** **Repeals and consequential**
2 **amendments**

3 **53 Act repealed**

4 The *Vocational Education and Training Act 1995* No 37 is repealed.

5 **54 Regulation repealed**

6 The *Vocational Education and Training Regulations 1998* No 26 are
7 repealed.

8 **55 Acts and regulations amended—sch 2**

9 Schedule 2 amends the Acts and regulations mentioned in it.

Schedule 1 Reviewable decisions

(see s 39)

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
1	26 (1) (Approval of training contract)	refusing to approve a training contract	applicant for approval
2	26 (4)	approving a training contract subject to conditions	applicant for approval
3	31 (2) (a) (Party may ask for amendment)	approving an amendment of an approved training contract	each party to the contract
4	31 (2) (b)	refusing to approve amendment of approved training contract	each party to the contract
5	32 (Authority may suspend, cancel or amend contract)	suspending or cancelling approval of a training contract	each party to the contract
6	32	amending an approved training contract	each party to the contract
7	34 (6) (a) (Dispute between employer and trainee)	making a finding of fact about a matter in relation to a training contract	each party to the contract

Schedule 1 Reviewable decisions

column 1 item	column 2 Act provision	column 3 reviewable decision	column 4 person to be notified
8	34 (6) (b)	amending an approved training contract	each party to the contract
9	34 (6) (c)	giving directions to a party to an approved training contract	each party to the contract
10	38 (2) (Obstructing visits)	suspending or cancelling approval of an approved training contract	each party to the contract
11	38 (2)	amending an approved training contract	each party to the contract

1 **Schedule 2** **Consequential amendments**
2 (see s 55)

3 **Part 2.1** **Annual Leave Act 1973**

4 **[2.1] Section 2 (1), definition of *approved training agreement***
5 *omit*

6 **[2.2] New definition of *approved training contract***
7 *insert*
8 *approved training contract*—see the *Vocational Education and*
9 *Training Act 2003*, dictionary.

10 **[2.3] Section 2 (1), definition of *trainee***
11 *omit*
12 a training agreement
13 *substitute*
14 an approved training contract

15 **[2.4] Section 2 (1), definition of *training agreement***
16 *omit*

1 **Part 2.2** **Building and Construction**
2 **Industry Training Levy Act**
3 **1999**

4 **[2.5] Section 28 (3)**

5 ~~omit~~

6 registered provider.

7 ~~substitute~~

8 registered training organisation.

9 **[2.6] Section 28 (4), definition of *registered provider***

10 ~~substitute~~

11 *registered training organisation*—see the *Tertiary Accreditation*
12 *and Registration Act 2003*, dictionary.

13 **Part 2.3** **Electricity Safety Act 1971**

14 **[2.7] Section 24 (2)**

15 ~~substitute~~

16 (2) In this section:

17 *accredited*, for a course—see the *Tertiary Accreditation and*
18 *Registration Act 2003*, dictionary.

19 *trainee*—see the *Vocational Education and Training Act 2003*,
20 dictionary.

Part 2.4 Electricity Safety Regulations 1971

[2.8] Regulation 3 (3) (b) (i) (A)

omit

Vocational Education and Training Act 1995;

substitute

Tertiary Accreditation and Registration Act 2003;

[2.9] Regulation 5 (3) (b) (i) (A)

omit

Vocational Education and Training Act 1995;

substitute

Tertiary Accreditation and Registration Act 2003;

Part 2.5 Long Service Leave Act 1976

[2.10] Section 2 (1), definition of *approved training agreement*

omit

[2.11] Section 2 (1), new definition of *approved training contract*

insert

approved training contract—see the *Vocational Education and Training Act 2003*, dictionary.

1 **[2.12] Section 2 (1), definition of *continuous service*,**
2 **paragraph (d)**

3 *substitute*

4 (d) for an employee who begins service with an employer within a
5 period of 12 months from the end of an apprenticeship, or an
6 approved training contract, with the employer—the period of
7 the apprenticeship or approved training contract.

8 **[2.13] Section 2 (1), definition of *trainee***

9 *omit*

10 a training agreement

11 *substitute*

12 an approved training contract

13 **[2.14] Section 2 (1), definition of *training agreement***

14 *omit*

15 **Part 2.6 Payroll Tax Act 1987**

16 **[2.15] Section 9A (8)**

17 *substitute*

18 (8) In this section:

19 ***approved training*** means training under an approved training
20 contract.

21 ***approved training contract***—see the *Vocational Education and*
22 *Training Act 2003*, dictionary.

23 ***recognised training*** means approved training other than training
24 declared under subsection (6) not to be recognised training.

Part 2.7 Workers Compensation Regulations 2002

[2.16] Regulation 95A (2), new definition of *approved training contract*

insert

approved training contract—see the *Vocational Education and Training Act 2003*, dictionary.

[2.17] Regulation 95A (2), definition of *group trainer*

substitute

group trainer means a registered training organisation that, as a business (a *labour hire business*), places trainees with employers relevant to the trainees' approved training contracts for the duration of their contracts.

[2.18] Regulation 95A (2), definition of *registered provider*

substitute

registered training organisation—see the *Tertiary Accreditation and Registration Act 2003*, dictionary.

[2.19] Regulation 95A (2), definition of *trainee*

omit

a training agreement

substitute

an approved training contract

[2.20] Regulation 95A (2), definition of *training agreement*

omit

Dictionary

(see s 4)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- entity
- exercise
- function
- may (see s 146)
- must (see s 146)
- person.

accreditation and registration council means the Accreditation and Registration Council established under the *Tertiary Accreditation and Registration Act 2003*.

ANTA means the Australian National Training Authority established by the Commonwealth Act.

ANTA agreement—see the Commonwealth Act, section 4 (1), definition of ***Agreement***.

approved training contract means a training contract approved by the authority under section 26 (Approval of training contract).

authority means the Vocational Education and Training Authority established by section 7.

committee means a committee established by the authority under section 21.

Commonwealth Act means the *Australian National Training Authority Act 1992* (Cwth).

employer, for a trainee, means the person who is obliged under a training contract to employ the trainee.

- 1 ***federal award*** means—
- 2 (a) an award or order that has been reduced to writing under the
- 3 *Workplace Relations Act 1996* (Cwlth), section 143 (1); or
- 4 (b) an enterprise flexibility agreement within the meaning of that
- 5 Act; or
- 6 (c) a certified agreement within the meaning of that Act.
- 7 ***industrial award*** means—
- 8 (a) a federal award; or
- 9 (b) an award, determination or order made by an entity prescribed
- 10 under the regulations.
- 11 ***qualification***—see the *Tertiary Accreditation and Registration Act*
- 12 2003, dictionary.
- 13 ***registered training organisation***—see the *Tertiary Accreditation*
- 14 *and Registration Act 2003*, dictionary.
- 15 ***statement of attainment***—see the *Tertiary Accreditation and*
- 16 *Registration Act 2003*, dictionary.
- 17 ***trades and labour council*** means the Trades and Labour Council of
- 18 the Australian Capital Territory Incorporated.
- 19 ***trainee*** means a person who undertakes training under a training
- 20 contract, and includes an apprentice.
- 21 ***work-related training*** means a sequence of vocational education
- 22 and training that is determined by the authority under section 25 to
- 23 be work-related training.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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