



Australian Capital Territory

# **Training and Tertiary Education Act 2003**

**A2003-36**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Training and Tertiary Education Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 July 2008. It also includes any amendment, repeal or expiry affecting the republished law to 2 July 2008.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Training and Tertiary Education Act 2003

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Australian Capital Territory

# Training and Tertiary Education Act 2003

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An Act about tertiary accreditation and registration, and for other purposes

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## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Training and Tertiary Education Act 2003*.

### 3 Purpose

The purpose of this Act is to establish an accreditation and registration framework for vocational education and training and higher education, in particular by applying nationally agreed protocols and 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.

*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 the 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.

## **Chapter 2            Accreditation and registration council**

### **Part 2.1            Establishment, functions and membership of council**

#### **7            Establishment of council**

The Accreditation and Registration Council (the *council*) is established.

#### **8            Functions of council**

- (1) The council has the following functions:
  - (a) to advise the Minister about—
    - (i) accreditation of vocational education and training courses and higher education courses; and
    - (ii) the registration of vocational education and training organisations and higher education providers; and
    - (iii) improving the quality of vocational education and training and higher education;
  - (b) to accredit vocational education and training courses and higher education courses;
  - (c) to register vocational education and training organisations and higher education providers;
  - (d) to facilitate recognition and quality assurance in the provision of vocational education and training;

- (e) to promote consistent national standards for—
  - (i) accreditation of vocational education and training courses and higher education courses; and
  - (ii) registration of vocational education and training organisations and higher education providers; and
  - (iii) the issue of qualifications and higher education awards;
- (f) to inquire into, and advise the Minister on, issues about vocational education and training and higher education.
- (2) The council may exercise any other function given to it under this Act or another Territory law.

*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*).

## **9 Ministerial directions to council**

- (1) The Minister may, in writing, give the council a direction about the exercise of its functions, but not about advising the Minister or reporting under the *Annual Reports (Government Agencies) Act 2004*, section 6 (Annual report of public authority).
- (2) The council must comply with a direction under this section.
- (3) A direction under this section is a notifiable instrument.

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

## **10 Delegation by council**

The council may delegate the exercise of its functions to—

- (a) a council member; or
- (b) a committee of the council; or
- (c) a council staff member; or

(d) a person or committee prescribed under the regulations.

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

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

## **12 Membership of council**

(1) The council consists of the following members:

- (a) a chairperson;
- (b) 4 people with expertise in vocational education and training;
- (c) 3 people with expertise in higher education;
- (d) 1 person appointed, after consultation with employer organisations, to represent the interests of employers;
- (e) 1 person appointed, after consultation with the trades and labour council, to represent the interests of employees;
- (f) 1 person who, in the Minister's opinion, represents the interests of providers of industry training advisory services.

(2) The Minister must appoint the council members.

*Note 1* For the making of appointments generally, see the Legislation Act, div 19.3.

*Note 2* Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

*Note 3* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).



### **13 Ending appointment of council member**

- (1) The Minister must end the appointment of a council member if the Minister becomes aware that the member—
  - (a) has failed to comply with section 14 (Disclosure of interests by council members) without reasonable excuse; or
  - (b) has at any time been convicted, in Australia or elsewhere, of an offence punishable by imprisonment for at least 1 year.
- (2) The Minister may end the appointment of a council member—
  - (a) if the member is absent from 3 consecutive meetings of the council other than on leave approved by the Minister; or
  - (b) for members mentioned in section 12 (1) (d) to (f)—if the Minister is satisfied that the member is no longer an appropriate person to represent the relevant interests; or
  - (c) for misbehaviour or physical or mental incapacity, if the incapacity affects the exercise of the member's functions; or
  - (d) if the member 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.

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

### **14 Disclosure of interests by council members**

- (1) A council member who has a relevant interest in an issue being considered, or about to be considered by the council must, as soon as practicable after the relevant facts have come to the council member's knowledge, disclose the nature of the interest at a meeting of the council.

- (2) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the council member must not—
  - (a) be present when the council considers the issue; or
  - (b) take part in a decision of the council on the issue.
- (3) Any other council member who also has a relevant interest in the issue must not—
  - (a) be present while the council is considering whether to make a decision under subsection (2); or
  - (b) take part in the decision.
- (4) In this section:  
*relevant interest*, in an issue, means a direct or indirect financial interest in the issue.

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

- (1) Within 14 days after the day the disclosure of an interest under section 14 (1) is made, the council chairperson must report to the Minister in writing about—
  - (a) the disclosure; and
  - (b) the nature of the interest disclosed; and
  - (c) any decision by the council under section 14 (2).
- (2) The council chairperson must give to the Minister, by 31 July in each year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 14 days after the day the Minister receives the statement.

(4) In this section:

*relevant committee* means—

- (a) the standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

## **16 Reimbursement for council members**

The Territory must reimburse a council member for expenses reasonably incurred in the exercise of the member's functions.

## **17 Council staff**

- (1) The council may make arrangements with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the council of public servants the subject of an arrangement under subsection (1).

## **18 Council's annual report**

A report prepared by the council under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 9 (Ministerial directions to council) during the year; and
- (b) a statement by the council about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## **Part 2.2                      Proceedings of council**

### **19                      Calling council meetings**

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

### **20                      Council procedures**

- (1) The council chairperson presides at meetings of the council.
- (2) However, if the chairperson is absent from a meeting, the members present may elect a member to preside at the meeting.
- (3) Business may be carried on at a council meeting only if at least 5 council members are present, including—
  - (a) the member mentioned in section 12 (1) (d); and
  - (b) the member mentioned in section 12 (1) (e).
- (4) A question arising at a meeting may be decided by a majority of the votes of members present and voting.
- (5) If the votes of the council on a question are equally divided, the decision of the member presiding is the decision of the council on the question.

- (6) A resolution is a valid resolution of the council, even if it is not passed at a meeting of the council, if at least  $\frac{2}{3}$  of the members agree to the proposed resolution in writing or by electronic communication.

**Example of electronic communication**

email

*Note* 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).

- (7) The council may decide its own procedure in relation to anything for which a procedure is not provided under this Act.
- (8) The council must keep minutes of its meetings.

## Part 2.3 Council committees

### 21 Establishment of committees

The council may establish committees to help the council in the exercise of its functions.

### 22 Exercise of committee functions

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

### 23 Membership of committees

- (1) A committee consists of the people appointed by the council.

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

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A committee may consist completely or partly of council members.

**24 Reimbursement for committee members**

- (1) A committee member is not entitled to be paid for the exercise of the member's functions.
- (2) However, the Territory must reimburse a committee member for expenses reasonably incurred in the exercise of the member's functions.
- (3) This section does not apply to a committee member who is also a council member.

## Part 2.4 Compliance audits

### 25 Audit of training organisations and higher education providers

The council may at any time conduct a compliance audit of—

- (a) a training organisation or higher education provider registered by the council, or that has applied to the council for registration; or
- (b) any of the operations of the organisation or provider in the ACT or elsewhere.

*Note* For visits to premises, see pt 6.1.

### 26 Audit of RTO registered by another registering body

- (1) This section applies in relation to—
  - (a) an RTO registered by a registering body other than the council (the *other registering body*); and
  - (b) any of the RTO's operations in the ACT.
- (2) The council may conduct a compliance audit of the RTO if—
  - (a) the council—
    - (i) suspects on reasonable grounds that the RTO has contravened the RTO standards; and
    - (ii) has advised the other registering body of the suspected contravention; and
  - (b) the other registering body—
    - (i) within 30 days after the day it receives the advice, fails to take steps to deal with the suspected contravention to the satisfaction of the council; or



- (ii) at any time advises the council that it does not propose to take any step or further step to deal with the suspected contravention.

**27 Conduct of audit**

- (1) The council must conduct a compliance audit of a training organisation or higher education provider using the relevant RTO standards and higher education standards.
- (2) A failure to comply with subsection (1) is of no effect if the failure—
  - (a) does not substantially affect the outcome of the audit; or
  - (b) arises out of inconsistency between the standards mentioned in subsection (1) and the legislation of the particular jurisdiction in relation to which the failure arises.

**28 Powers not limited by compliance audit provisions**

This part does not limit the power of the council or any other registering body to inquire into the activities of a training organisation or higher education provider.

## **Chapter 3 Vocational education and training**

### **Part 3.1 Preliminary**

#### **29 Application of ch 3**

This chapter applies to the provision of vocational education and training and assessments for qualifications and statements of attainment.

## **Part 3.2                      National register**

### **30                      Registration and national effect of registration**

For this chapter, a person or matter is registered if details of the person or matter are recorded on the national register—

- (a) for this chapter—by the council; or
- (b) for a corresponding law—by another registering body, or by a body equivalent to the council in another jurisdiction that is responsible for the administration of the accreditation of courses of vocational education (however described) under the corresponding law; or
- (c) for this chapter or a corresponding law—by ANTA or another entity.

## Part 3.3 Registered training organisations

### 31 Scope of registration of RTO

For this Act, an RTO's *scope of registration* consists of the qualifications, statements of attainment or units of competency for which the RTO is registered to provide training or assessments.

### 32 Applying in the ACT for registration as RTO

- (1) A person may apply to the council for registration as a training organisation.

*Note* If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) The applicant must give the council any information required by it to decide the application.

### 33 Decision about registration as RTO

- (1) On an application for registration, the council must register the applicant as a training organisation, or refuse to do so.
- (2) In deciding the application, the council must apply the RTO standards.
- (3) The council may register the applicant only if—
  - (a) on registration under the application, the applicant will not otherwise be registered as a training organisation by any other registering body; and
  - (b) the council considers that the applicant's main place of business is, or all or most of its operations will be conducted, in the ACT; and

- (c) a compliance audit has been conducted of the applicant that shows that the applicant complies with the RTO standards (other than the legislative compliance standard).

*Note* Section 27 (Conduct of audit) prescribes a requirement for an audit mentioned in s (3) (c).

- (4) Subsection (3) (c) does not apply to an application, if—
- (a) the application is made by an RTO registered by another registering body; and
  - (b) the council is satisfied that there are no outstanding audit compliance failures for the RTO; and
  - (c) the RTO has received a notice from the other registering body under a corresponding law for section 39 (Cancelling RTO registration on change of location of operations); and
  - (d) the applicant does not seek an amendment of the RTO's existing scope or conditions of registration.
- (5) Subsections (2) and (3) do not limit the grounds on which the council may decide not to register an applicant.
- (6) The council may impose conditions on the registration of the applicant as a training organisation.

**Example**

a condition that the RTO delivers a nationally recognised course

*Note* 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).

- (7) A condition imposed under subsection (6)—
- (a) must apply in every jurisdiction, that is, it may not be limited in effect to a particular place or jurisdiction, unless the contrary intention appears; and

(b) must be consistent with this chapter and the RTO standards.

*Note* For conditions to which an RTO is subject under this chapter, see s 35 (Registration conditions—RTO).

- (8) If the council decides to register an applicant, it must—
- (a) register the applicant as a training organisation; and
  - (b) register details of the applicant's scope of registration.
- (9) The council must comply with subsection (8)—
- (a) immediately after approving the application; or
  - (b) if the application is made in conjunction with an application for the cancellation of a training organisation's registration under a corresponding law for section 39 (Cancelling RTO registration on change of location of operations)—immediately after the cancellation under the corresponding law is registered by the other registering body.

### 34 Decision about registration—registration as RTO previously cancelled

- (1) Despite section 33, the council must refuse to register an applicant as a training organisation if—
- (a) the applicant, or an associate of the applicant, has previously been registered as a training organisation; and
  - (b) the registration of the training organisation was cancelled (other than on the application of the training organisation) less than 12 months before the day the application for registration is made.

- (2) In this section:

***associate***—a person is an ***associate*** of someone else in relation to a training organisation if the person can, or will be able to, have a significant influence over, or in relation to, the carrying out of the operations of the training organisation.

**35 Registration conditions—RTO**

- (1) Registration of an RTO under section 33 (Decision about registration as RTO) is subject to—
  - (a) conditions imposed under subsection (2) ; and
  - (b) conditions imposed—
    - (i) under section 33 (6) or 38 (2) (Amending, suspending or cancelling registration without application); or
    - (ii) by another registering body under a corresponding law for section 38 (2) (a).
- (2) The following conditions of registration are imposed on an RTO registered under section 33 (Decision about registration as RTO):
  - (a) the RTO must comply with requirements stated to apply to an RTO under the RTO standards;
  - (b) the RTO must, as far as practicable, give notice to the council of proposals for the following matters before they happen:
    - (i) any substantial change to the RTO’s control, management or operations;
    - (ii) any matter that the RTO must give notice of to the council under the RTO standards;
  - (c) the RTO must give notice to the council of a matter mentioned in paragraph (b) immediately after it happens;
  - (d) the RTO—
    - (i) must submit to any compliance audit conducted by the council; and
    - (ii) if a compliance audit shows that the RTO does not comply with the RTO standards (other than any legislative compliance standard)—must take all necessary steps to comply;

- (e) the RTO must submit to any compliance audit conducted by another registering body under a corresponding law for section 26 (Audit of RTO registered by another registering body);

*Note* Section 27 (Conduct of audit) prescribes a requirement for a compliance audit mentioned in s (2) (c) and (d).

- (f) the RTO must not contravene a provision of this Act or a corresponding law;
  - (g) the RTO must give to the council any information about any of its operations required by the council;
  - (h) the RTO must give to the council any information required by the council about a condition of registration imposed under section 38 (Amending, suspending or cancelling RTO registration without application);
  - (i) the RTO must give to another registering body any information required by the other registering body about a condition of registration imposed by the registering body under a corresponding law for section 38 (2) (a).
- (3) A condition to which an RTO is subject under this section applies to the operations of the RTO in every jurisdiction, unless the contrary intention appears.
  - (4) An RTO must not contravene a condition of its registration.

*Note* For effect of noncompliance with a condition, see s 38 (2).

- (5) A condition to which an RTO registered by another registering body is expressed to be subject in the Territory under a corresponding law has effect for the Territory.

### **36 Period of registration—RTO**

The registration of an RTO may be for a period of up to 5 years, and may be renewed if application for renewal is made at least 6 months before the day the registration ends.



### **37 Amending registration on application by RTO**

- (1) On application by an RTO that was registered by it, the council must amend the RTO's registered details, or refuse to do so.

*Note* If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) If the application is to amend the RTO's scope or conditions of registration, the RTO must give the council any information required by it to decide the application.
- (3) For an application mentioned in subsection (2), section 33 (Decision about registration as RTO) applies as if it were an application under that section, subject to the following:
- (a) section 33 (3) (a) is not relevant;
  - (b) section 33 (3) (b) applies in relation to the scope or conditions of registration, as amended in accordance with the application;
  - (c) section 33 (3) (c) only requires a compliance audit to the extent that an audit is relevant to the amendment.
- (4) On application by an RTO for the cancellation of registration, other than an application to which section 39 (1) (Cancelling RTO registration on change of location of operations) applies, the council must cancel the registration of the RTO.

### **38 Amending, suspending or cancelling RTO registration without application**

- (1) An object of this section is to ensure that, of all registering bodies, the registering body that registers an RTO has the primary responsibility to take action against the RTO if a ground mentioned in subsection (3) arises.
- (2) On 1 or more of the grounds mentioned in subsection (3), the council may on its own initiative—

- (a) amend the scope or conditions of registration of an RTO that was registered by another registering body, but only to impose a restriction applying in the ACT; or
  - (b) amend the scope or conditions of registration of an RTO that was registered by it, including by imposing a restriction applying in the ACT or another jurisdiction; or
  - (c) suspend the registration, or part of the scope of registration, of an RTO that was registered by it, by imposing a prohibition applying in the ACT or another jurisdiction while the suspension is in force; or
  - (d) cancel the registration of an RTO that was registered by it.
- (3) The grounds are as follows:
- (a) the registration, or the part of the scope of registration, was obtained because of incorrect or misleading information;
  - (b) the RTO has contravened a condition of registration.
- (4) The council must not impose a restriction under subsection (2) (a) unless the registering body that registered the RTO—
- (a) fails to take any step to deal with the matter to which the grounds relate within 30 days after the day the matter comes to its attention; or
  - (b) fails, after taking any step to deal with the matter to which the grounds relate, to take another step within 30 days.
- (5) Subsection (4) does not apply if the council is relying on a ground established by a compliance audit.
- (6) Also, subsection (4) does not stop the council, before the end of a 30-day period mentioned in the subsection, taking all steps necessary to impose a restriction immediately after, or at any time after, the period has ended.

- (7) If a restriction or prohibition imposed under subsection (2) (a), (b) or (c) relates to a particular place or jurisdiction, it may only be imposed because of a particular fact situation that has arisen in the place or jurisdiction.
- (8) Also, a restriction or prohibition imposed under subsection (2) (a), (b) or (c) must be consistent with this chapter and the RTO standards.
- (9) Before cancelling the registration of an RTO under subsection (2) (d), the council must consult the registering bodies of each other jurisdiction where the RTO is operating.
- (10) Failure to comply with subsection (9) does not affect a cancellation of the registration of an RTO.

### **39 C cancelling RTO registration on change of location of operations**

- (1) On the grounds that an RTO does not have its main place of business, and does not conduct all or most of its operations, in the ACT, the council may cancel the RTO's registration—
  - (a) on application by the RTO; or
  - (b) on its own initiative.
- (2) The council must give notice to the RTO at least 30 days before cancelling the registration.
- (3) If, before the end of the period mentioned in subsection (2), the RTO makes an application to another registering body for registration as a training organisation (the *transfer application*), the council must not cancel the registration of the RTO until the transfer application is decided.
- (4) Subsection (3) does not apply if the council is satisfied that the RTO is not acting honestly in relation to the transfer application.

#### **40 Effect of suspending RTO registration**

- (1) This section applies if a prohibition is imposed on an RTO under section 38 (2) (c) (Amending, suspending or cancelling RTO registration without application).
- (2) Subject to section 41 (3) (Suspension of registration—training or assessment previously agreed), a person must not do anything for any of the following purposes in relation to training or an assessment that is the subject of the prohibition:
  - (a) recruitment or enrolment;
  - (b) soliciting or accepting any consideration for recruitment or enrolment;
  - (c) starting or providing the training or assessment;
  - (d) issuing any qualification or statement of attainment in relation to the training or assessment, unless the training or assessment was completed before the prohibition.

Maximum penalty: 50 penalty units.

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

#### **41 Suspension of registration—training or assessment previously agreed**

- (1) This section applies to an RTO if—
  - (a) a prohibition is imposed on the RTO under section 38 (2) (c) (Amending, suspending or cancelling RTO registration without application); and
  - (b) before the prohibition took effect, the RTO entered into an agreement to provide training or an assessment to a person that the RTO would be prohibited from providing if it were not for this section; and

(c) the council approves the training or assessment under subsection (2).

- (2) On application by the RTO, the council may approve the provision of training or assessment under the agreement for a period ending no later than 12 months after the prohibition started, unless the council considers that there are circumstances justifying the refusal of the application.

**Example of circumstance**

danger of injury to anyone's health or safety

*Note* 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).

- (3) The prohibition is taken not to have effect during the period stated in the approval for the purposes only of enabling the RTO to—
- (a) provide the training or assessment; or
  - (b) issue a qualification or statement of attainment in relation to the training or assessment.
- (4) Section 40 (2) does not apply in relation to the training or assessment, subject to subsection (6).
- (5) The council may, in exceptional circumstances, direct the RTO to immediately stop conducting the operations mentioned in subsection (3).

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

- (6) If the council gives a direction to the RTO under subsection (5)—
- (a) the effect of the prohibition is taken to start again from the day after the day the direction is given; and
  - (b) in particular, section 40 (2) applies in relation to the training and assessment.

## 42 Cancellation of registration—training or assessment previously agreed

- (1) This section applies to an RTO if—
  - (a) the council cancels its registration; and
  - (b) before the cancellation took effect, the RTO entered into an agreement to provide training or an assessment to a person; and
  - (c) the council approves the training or assessment under subsection (2).
- (2) On application by the RTO, the council may approve the provision of training or assessment under the agreement for a period ending no later than 12 months after the cancellation, unless the council considers that there are circumstances justifying the refusal of the application.

### Example of circumstance

danger of injury to anyone's health or safety

*Note* 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).

- (3) The registration of the RTO is taken to continue during the period stated in the approval for the purposes only of enabling the RTO to—
  - (a) provide the training or assessment; or
  - (b) issue any qualification or statement of attainment in relation to the training or assessment.
- (4) The council may, in exceptional circumstances, direct the RTO to immediately stop conducting the operations mentioned in subsection (3).

### Example of exceptional circumstance

danger of injury to anyone's health or safety

- (5) If the council gives a direction to the RTO under subsection (4) the RTO's registration is taken to be cancelled for all purposes from the day after the day the direction is given.

**43 Registration of amendment, end of registration etc.**

If the registration of an RTO is amended or the registration ends (whether by expiry or cancellation), the council must amend the national register as follows:

- (a) for an amendment of the scope or details of registration, other than an amendment of the conditions of registration—record details of the amendment;
- (b) for the end of registration—remove the registered details of the RTO.

**44 Offence to falsely claim to be RTO etc**

- (1) A person who is not an RTO commits an offence if the person claims to be an RTO.

Maximum penalty: 50 penalty units.

- (2) A person who is not, or is not acting for, an RTO operating within the RTO's scope of registration commits an offence if the person—

- (a) claims that the person can issue, or purports to issue, a qualification or statement of attainment; or
- (b) claims that the person can provide, or purports to provide, training or assessments resulting in the issue of a qualification or statement of attainment.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—

- (a) the person claims that the person can provide training resulting in the issue of a qualification or statement of attainment by someone else; and

- (b) the claim is not correct because—
  - (i) the first person cannot provide that training; or
  - (ii) the other person cannot issue the qualification or statement of attainment.

Maximum penalty: 50 penalty units.

- (4) For this section, a person claims to be an RTO or claims that the person can do a particular thing if the person—
  - (a) makes that claim; or
  - (b) says or does anything likely to induce someone else to believe the person is an RTO or can do the particular thing.
- (5) This section does not apply to a registering body.
- (6) An offence against this section is a strict liability offence.



## **Part 3.4 National scheme—compliance and information**

### **45 Function may be used to support national scheme**

- (1) This section applies to a person who, apart from this section, may exercise a function under this chapter in relation to an RTO or an applicant for registration under section 33 (Decision about registration as RTO).
- (2) The person may also exercise the same kind of function in the ACT—
  - (a) at the request of the council—for inquiries into whether an RTO registered by another registering body is complying with this chapter or a corresponding law; or
  - (b) at the request of another registering body—for a compliance audit that is being conducted under a corresponding law in relation to—
    - (i) an RTO registered by the other registering body; or
    - (ii) an applicant for registration by the other registering body under a corresponding law for section 33.
- (3) Subsection (2) does not limit the person's functions.

### **46 Information may be made available to other registering bodies**

- (1) The council may disclose to another registering body information it has about, or arising from, the following:
  - (a) an application for registration as a training organisation;
  - (b) an RTO's registration;
  - (c) a compliance audit conducted by the council;

- (d) action taken by the council in relation to an RTO;
  - (e) the exercise of a function by a person at the request of another registering body.
- (2) A person disclosing information under subsection (1) or under a corresponding law for subsection (1) does not contravene an obligation not to disclose the information, whether imposed by a law in force in any jurisdiction or by another rule of law.

## **Part 3.5**                      **Accredited courses—vocational education**

### **47**                      **Applying in the ACT for accreditation—vocational course**

- (1) A person may apply to the council to have a vocational educational and training course accredited.

*Note*      If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) The applicant must give the council any information required by it to decide the application.

### **48**                      **Decision about accreditation—vocational course**

- (1) On an application to have a vocational educational and training course accredited under this part, the council must accredit the course or refuse to do so.
- (2) In deciding the application, the council must apply the standards for accreditation of courses.
- (3) Subsection (2) does not limit the grounds on which the council may refuse to accredit the course.
- (4) If the council decides to accredit the course, it must register the course as an accredited course.

### **49**                      **Expert committee for pt 3.5**

- (1) The council must establish a committee under part 2.3 (Council committees) to help the council in deciding an application to accredit a course under this part.
- (2) The committee must include as members—
  - (a) people who are, in the council’s opinion, qualified in the area of study of the course; and

- (b) people who are, in the council's opinion, qualified to assess the educational and management capacity of the proposed provider of the course; and
- (c) people who are, in the council's opinion, qualified to assess the suitability of the course and of the proposed methods of delivery of the course.

**50 Period of accreditation—vocational course**

Accreditation of a vocational educational and training course may be for a period of up to 5 years, and may be renewed if application for renewal is made at least 6 months before the day the accreditation ends.

**51 Cancelling accreditation—vocational course**

The council may cancel the accreditation of a vocational education and training course that has been accredited by the council, on 1 or more of the following grounds:

- (a) the course does not meet the standards for accreditation of courses;
- (b) the course provider does not have the educational or management capacity to provide the course;
- (c) the method of delivery is not suitable for the course.

**52 Cancellation of accreditation—vocational course previously agreed**

- (1) This section applies to a vocational educational and training course being provided by a person if—
  - (a) the council cancels the accreditation of the course; and
  - (b) before the cancellation took effect, the person entered into an agreement to provide the course to someone else; and

(c) the council approves the provision of the course under subsection (2).

- (2) On application by the person, the council may approve the provision of the course under the agreement for a period ending no later than 12 months after the cancellation, unless the council considers that there are circumstances justifying the refusal of the application.

**Example of circumstance**

danger of injury to anyone's health or safety

*Note* 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).

- (3) The accreditation of the course is taken to continue during the period stated in the approval for the purposes only of enabling the person to—
- (a) provide the course; or
- (b) issue any qualification or statement of attainment in relation to the course.
- (4) The council may, in exceptional circumstances, direct the person to immediately stop conducting the operations mentioned in subsection (3).

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

- (5) If the council gives a direction to a person under subsection (4), the accreditation of the course is taken to be cancelled for all purposes from the day after the day the direction is given.

## 53 Registering end of accreditation

If the accreditation of a vocational educational and training course ends (whether by expiry or cancellation), the council must remove the details of the course from the national register.

**54 Offence to falsely claim vocational education course accredited**

- (1) A person commits an offence if the person—
- (a) either—
    - (i) claims to provide an accredited course; or
    - (ii) claims to provide, or provides, a course under a title or description that is substantially the same as that of any course listed in the AQF as a vocational education and training course; and
  - (b) the course is not an accredited course.
- Maximum penalty: 50 penalty units.
- (2) For subsection (1), a person claims to provide an accredited course if the person—
- (a) makes that claim; or
  - (b) claims to provide a course that purports to be an accredited course; or
  - (c) says or does anything likely to induce someone else to believe a course the person is providing is accredited.
- (3) An offence against this section is a strict liability offence.

## **Part 3.6 Disagreements under chapter 3**

### **55 Disagreement with decision of council under s 33 or s 48**

- (1) This section applies if an applicant disagrees with a decision of the council in relation to an application for—
  - (a) registration as a training organisation under section 33 (Decision about registration as RTO); or
  - (b) accreditation of a vocational education and training course under section 48 (Decision about accreditation—vocational education course); or
- (2) The applicant may, within 14 days after the day the applicant is notified of the decision under section 105 (Notice of reviewable decisions), ask the council to refer the disagreement to a committee for resolution.
- (3) As soon as practicable after receiving the request for referral, the council must refer the disagreement to a committee.
- (4) Within 28 days after the day the committee receives the referral, the committee must attempt to resolve the disagreement and report to the council about the outcome.

## Chapter 3A Work-related training and training contracts

### 55A Determination of work-related training

- (1) The chief executive may determine that a sequence of vocational education and training is work-related training for this Act.

**Examples**

- 1 apprenticeship
- 2 traineeship

*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)).

### 55B Approval of training contract

- (1) The chief executive may approve a training contract between an employer and another person in relation to work-related training.
- (2) The chief executive must not approve a training contract unless satisfied that—
- (a) the contract complies with the form and content of the nationally agreed training contract; and
  - (b) the facilities, equipment and methods proposed to be used for the training are suitable; and



- (c) the qualifications, knowledge and skills of the person proposed to deliver the training are appropriate; and
  - (d) the person proposed to deliver the training conducts himself or herself in a way appropriate for a person responsible for the delivery of training; and
  - (e) the employer is likely to comply with any relevant industrial arrangement.
- (3) The chief executive may approve a training contract subject to conditions.
- (4) In this section:

***industrial arrangement*** means—

- (a) an award or order that has been reduced to writing under the *Workplace Relations Act 1996* (Cwlth); or
- (b) a workplace agreement within the meaning of that Act; or
- (c) a contract of employment.

***nationally agreed training contract*** means the training contract agreed between the Commonwealth, States and Territories.

### **55C Application for approval**

An application for approval must be made in a way required by the chief executive.

*Note* If a form is approved under s 112 for this provision, the form must be used.

### **55D Training contracts for qualification or statement of attainment**

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

- (2) However, a contract cannot be entered into if the chief executive or the council decides that training contracts cannot be entered into for the particular qualification or statement of attainment.

**55E Training must be under approved training contract**

- (1) An employer commits an offence if—
- (a) the employer provides a person with work-related training for a qualification or statement of attainment; and
  - (b) the employer employs the person on trainee or apprentice wages and conditions; and
  - (c) there is no approved training contract between the employer and the person.

Maximum penalty: 50 penalty units.

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

**55F Code of practice**

- (1) In providing work-related training under an approved training contract, all parties must comply with any code of practice approved by the Minister for this section.
- (2) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

- (3) An approval is a disallowable instrument.

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

**55G Party may ask for amendment**

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

*Note* If a form is approved under s 112 for this provision, the form must be used.

- (2) The chief executive must—
  - (a) approve the amendment requested; or
  - (b) refuse to approve it.
- (3) The chief executive must not approve an amendment unless satisfied that the contract as amended complies with the form and content of the nationally agreed training contract.
- (4) Subject to subsection (3), the chief executive must approve an amendment requested by all parties unless satisfied that the amendment would adversely affect the provision of the training.

**55H Chief executive may suspend, cancel or amend contract**

The chief executive may suspend or cancel approval of a training contract or amend an approved training contract—

- (a) if the employer is unable to provide training under the contract because of a change in the employer's circumstances; or
- (b) if the chief executive is satisfied that it is in the interests of the trainee to suspend or cancel the approval or amend the contract; or
- (c) in any other circumstance prescribed by regulation.

**55I Dispute between employer and trainee**

- (1) This section applies if a dispute about training under an approved training contract arises between parties to the contract.
- (2) A party may ask the chief executive to resolve the dispute.

- (3) Within 28 days after the day of receiving the request, the chief executive must attempt to resolve the dispute.
- (4) In attempting to resolve the dispute, the chief executive must take into account any views of the council on an issue in dispute.
- (5) If the dispute is not resolved after the end of that 28-day period, the chief executive may—
  - (a) make a finding of fact about any matter relating to the training contract; or
  - (b) amend the contract; or
  - (c) give directions to a party to the contract incidental to an action under paragraph (a) or (b).

## **Chapter 4            Higher education— non-universities**

### **Part 4.1            Preliminary**

#### **56            Application of ch 4**

This chapter applies to the provision, by providers other than universities, of higher education courses leading to higher education awards.

## **Part 4.2 ACT register**

### **57 ACT register of higher education providers**

- (1) The council must establish and maintain a register to be known as the ACT register of higher education providers.
- (2) For this chapter, a person or matter is registered if details of the person or matter are recorded on the register.

## Part 4.3 Registered higher education providers

### 58 Scope of registration of higher education provider

For this Act, a higher education provider's *scope of registration* consists of—

- (a) the courses the person is registered to provide; and
- (b) the higher education awards for which the person is registered to provide courses.

### 59 Application for registration as higher education provider

- (1) A person may apply to the council for registration as a higher education provider.

*Note* If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) The applicant must give the council any information required by it to decide the application.

### 60 Decision about registration as higher education provider

- (1) On an application for registration, the council must register the applicant as a higher education provider, or refuse to do so.
- (2) In deciding the application, the council must apply the higher education standards.
- (3) The council may register the applicant only if—
  - (a) a compliance audit has been conducted of the applicant that shows that the applicant complies with the higher education standards (other than any legislative compliance standard); or

- (b) if the applicant is recognised in a foreign country as a higher education provider—
  - (i) the authority in that country that recognised the applicant is, in the Minister’s opinion, the competent authority for the purpose; and
  - (ii) the Minister is reasonably satisfied that the applicant complies with the higher education standards.
- (4) In deciding the application, the council may consult with relevant people or professional or industry bodies and any committee established by the council for section 62 (Expert committee for pt 4.3).
- (5) The council may impose conditions on the registration of the applicant as a higher education provider.
- (6) A condition must be consistent with this chapter and the national protocols.
- (7) If the council decides to register the applicant, it must—
  - (a) register the applicant as a registered higher education provider; and
  - (b) register details of the applicant’s scope of registration.

**61 Decision about registration—registration of higher education provider previously cancelled**

- (1) Despite section 60, the council must refuse to register an applicant as a higher education provider if—
  - (a) the applicant, or an associate of the applicant, has previously been registered as a higher education provider; and
  - (b) the registration of the higher education provider was cancelled (other than on the application of higher education provider) less than 12 months before the day the application for registration is made.



- (2) In this section:

*associate*—a person is an *associate* of someone else in relation to a higher education provider if the person can, or will be able to, have a significant influence over, or in relation to, the carrying out of the operations of the higher education provider.

## **62 Expert committee for pt 4.3**

- (1) The council must establish a committee under part 2.3 (Council committees) to help the council in deciding an application under this part.
- (2) The committee must include as members—
- (a) people who are, in the council’s opinion, qualified in an area relevant to the courses proposed to be offered by the relevant higher education provider; and
  - (b) people who are, in the council’s opinion, qualified to assess the financial and management capacity of the higher education provider.

## **63 Registration conditions—higher education provider**

- (1) Registration of a higher education provider under section 60 (Decision about registration as higher education provider) is subject to—
- (a) conditions imposed under subsection (2) ; and
  - (b) conditions imposed under section 60 (5) or 66 (1) (a) (Amending, suspending or cancelling registration without application—higher education provider).

- (2) The following conditions of registration are imposed on a higher education provider registered under section 60:
- (a) the provider must comply with requirements stated to apply to higher education providers under the higher education standards;
  - (b) the provider must, as far as practicable, give notice to the council of proposals for the following matters before they happen:
    - (i) any substantial change to the provider's control, management or operations;
    - (ii) any matter that the provider must give notice of to the council under the higher education standards;
  - (c) the provider must give notice to the council of a matter mentioned in paragraph (b) immediately after it happens;
  - (d) the provider—
    - (i) must submit to any compliance audit conducted by the council; and
    - (ii) if a compliance audit shows that the provider does not comply with the higher education standards (other than any legislative compliance standard)—must take all necessary steps to comply;
  - (e) the provider must not contravene a provision of this Act;
  - (f) the provider must give the council any information about any of its operations required by the council;
  - (g) the provider must give to the council any information required by the council about a condition of registration imposed under section 66 (Amending, suspending or cancelling registration without application—higher education provider);

- (3) A registered higher education provider must not contravene a condition of its registration.

*Note* For effect of noncompliance with a condition, see s 66 (1).

**64 Period of registration—higher education provider**

Registration of a higher education provider may be for a period of up to 5 years, and may be renewed if application for renewal is made at least 6 months before the day the registration ends.

**65 Amending or cancelling registration on application by higher education provider**

- (1) On application by a registered higher education provider, the council must amend the provider's registered details, or refuse to do so.

*Note* If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) If the application is to amend the higher education provider's scope or conditions of registration, the provider must give the council any information required by it to decide the application.
- (3) For an application mentioned in subsection (2), section 60 (Decision about registration as higher education provider) applies as if it were an application under that section, except that section 60 (3) (a), if it applies, only requires a compliance audit to the extent that an audit is relevant to the amendment.
- (4) On application by a registered higher education provider for the cancellation of registration, the council must cancel the provider's registration.

**66 Amending, suspending or cancelling registration without application—higher education provider**

- (1) On 1 or more of the grounds mentioned in subsection (2), the council may on its own initiative—
  - (a) amend the scope or conditions of registration of a registered higher education provider, including by imposing a restriction; or
  - (b) suspend the registration, or part of the scope of registration of a higher education provider, by imposing a prohibition while the suspension is in force; or
  - (c) cancel the registration of a higher education provider.
- (2) The grounds are as follows:
  - (a) the registration, or the part of the scope of registration, was obtained because of incorrect or misleading information;
  - (b) the higher education provider has contravened a condition of registration.
- (3) A restriction or prohibition imposed under subsection (1) (a) or (b) must be consistent with this chapter and the higher education standards.

**67 Effect of suspending registration of higher education provider**

- (1) This section applies if a prohibition is imposed on a higher education provider under section 66 (1) (b) (Amending, suspending or cancelling registration without application—higher education provider).

- (2) Subject to section 68 (4) (Suspension of registration—higher education course previously agreed), a person must not do anything for any of the following purposes in relation to a higher education course that is the subject of the prohibition:
- (a) recruitment or enrolment;
  - (b) soliciting or accepting any consideration for recruitment or enrolment;
  - (c) starting or providing the course;
  - (d) granting a higher education award in relation to the course, unless the course was completed before the prohibition.

Maximum penalty: 50 penalty units.

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

**68 Suspension of registration—higher education course previously agreed**

- (1) This section applies to a registered higher education provider if—
- (a) a prohibition is imposed on the provider under section 66 (1) (b) (Amending, suspending or cancelling registration without application—higher education provider); and
  - (b) before the prohibition took effect, the provider entered into an agreement to provide a higher education course to a person that the provider would be prohibited from providing if it were not for this section; and
  - (c) the council approves the course under subsection (2).
- (2) On application by the higher education provider, the council may approve the provision of the course under the agreement for a period ending no later than 2 years after the prohibition started, if the council considers it is justified in the circumstances.

- (3) In making a decision under subsection (2), the council must take into account—
- (a) the welfare of persons to whom the course is to be provided; and
  - (b) the nature and quality of the course.
- (4) The prohibition is taken not to have effect during the period stated in the approval for the purposes only of enabling the higher education provider to—
- (a) provide the course; or
  - (b) grant a higher education award in relation to the course.
- (5) Section 67 (2) (Effect of suspension of registration of higher education course) does not apply in relation to the course, subject to subsection (7).
- (6) The council may, in exceptional circumstances, direct the higher education provider to immediately stop conducting the operations mentioned in subsection (4).

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

*Note* 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).

- (7) If the council gives a direction to the higher education provider under subsection (6)—
- (a) the effect of the prohibition is taken to resume from the day after the day the direction is given; and
  - (b) in particular, section 67 (2) applies in relation to the course.

**69 Cancellation of registration—higher education course previously agreed**

- (1) This section applies to a registered higher education provider if—
  - (a) the council cancels its registration; and
  - (b) before the cancellation took effect, the provider entered into an agreement to provide a higher education course to a person; and
  - (c) the council approves the course under subsection (2).
- (2) On application by the higher education provider, the council may approve the provision of the course under the agreement for a period ending no later than 2 years after the cancellation, if the council considers it is justified in the circumstances.
- (3) In making a decision under subsection (2), the council must take into account—
  - (a) the welfare of persons to whom the course is to be provided; and
  - (b) the nature and quality of the course.
- (4) The registration of the higher education provider is taken to continue during the period stated in the approval for the purposes only of enabling the provider to—
  - (a) provide the course; or
  - (b) grant a higher education award in relation to the course.

- (5) The council may, in exceptional circumstances, direct the higher education provider to immediately stop conducting the operations mentioned in subsection (4).

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

*Note* 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).

- (6) If the council gives a direction to the higher education provider under subsection (5), the provider's registration is taken to be cancelled for all purposes from the day after the day the direction is given.

**70 Registration of amendment, suspension, cancellation etc.**

If the registration of a higher education provider is amended or suspended, or the registration ends (whether by expiry or cancellation), the council must amend the register of ACT higher education providers as follows:

- (a) for an amendment of the scope or details of registration, other than an amendment of the conditions of registration—record details of the amendment;
- (b) for the end of registration—remove the registered details of the provider.



**71 Offence to falsely claim to be higher education provider etc**

- (1) A person other than a university who is not a registered higher education provider commits an offence if the person claims to be a higher education provider.

Maximum penalty: 100 penalty units.

- (2) A person who is not, or is not acting for, a registered higher education provider commits an offence if the person operates as a higher education provider in the ACT.

Maximum penalty: 50 penalty units.

- (3) A registered higher education provider must not operate as a higher education provider outside the scope of registration of the provider.

Maximum penalty: 50 penalty units.

- (4) For subsection (2) or (3), a person operates as a higher education provider in the ACT if the person—

- (a) offers to provide in the ACT a higher education course; or
- (b) provides a higher education course in the ACT; or
- (c) claims that the person can provide a higher education course in the ACT; or
- (d) claims that the person can issue a higher education award in the ACT.

- (5) For this section, a person claims that the person can do a thing if the person—

- (a) makes that claim; or
- (b) says or does anything likely to induce someone else to believe that the person can do the particular thing.

- (6) For this section, a person is taken to operate as a higher education provider in the ACT if the person does a thing mentioned in subsection (2) or (3)—
- (a) as the agent of someone else; or
  - (b) under a franchise arrangement that applies to all or part of the ACT (whether or not it also applies to a place outside the ACT).
- (7) Also, for this section, a person is taken to operate as a higher education provider in the ACT if the person does a thing mentioned in subsection (4) in or from the ACT by means of—
- (a) a computer adapted for communicating by way of the internet or another communications network; or
  - (b) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network; or
  - (c) a telephone; or
  - (d) any other electronic device.
- (8) An offence against this section is a strict liability offence.

## **Part 4.4**                      **Accredited courses—higher education**

### **72**                      **Applying for accreditation—higher education course**

- (1) A person may apply to the council to have a higher education course accredited.

*Note*      If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) The applicant must give the council any information required by it to decide the application.

### **73**                      **Decision about accreditation—higher education course**

- (1) On an application to have a higher education course accredited under this part, the council must grant the accreditation, or refuse to do so.
- (2) In deciding the application, the council must apply the higher education standards.
- (3) Subsection (2) does not limit the grounds on which the council may refuse to accredit the course.
- (4) If the council decides to accredit the course, it must register the course as an accredited course.

### **74**                      **Expert committee for pt 4.4**

- (1) The council must establish a committee under part 2.3 (Council committees) to help the council in deciding an application to accredit a course under this part.
- (2) The committee must include as members—
  - (a) people who are, in the council’s opinion, qualified in the area of study of the course; and

- (b) people who are, in the council's opinion, qualified to assess the educational and management capacity of the proposed provider of the course; and
- (c) people who are, in the council's opinion, qualified to assess the suitability of the course and of the proposed methods of delivery of the course.

**75 Period of accreditation—higher education course**

Accreditation of a higher education course may be for a period of up to 5 years and may be renewed if application for renewal is made at least 6 months before the day the accreditation ends.

**76 Cancelling accreditation—higher education course**

- (1) The council must cancel the accreditation of a higher education course on application by the person providing the course.
- (2) The council may cancel the accreditation of a higher education course in the circumstances prescribed under the regulations.

**77 Cancellation of accreditation—higher education course previously agreed**

- (1) This section applies to a higher education course being provided by a person if—
  - (a) the council cancels the accreditation of the course; and
  - (b) before the cancellation took effect, the person entered into an agreement to provide the course to someone else; and
  - (c) the council approves the provision of the course under subsection (2).
- (2) On application by the person, the council may approve the provision of the course under the agreement for a period ending no later than 2 years after the cancellation, if the council considers it is justified in the circumstances.

- (3) In making a decision under subsection (2), the council must take into account—
- (a) the welfare of persons to whom the course is to be provided; and
  - (b) the nature and quality of the course.
- (4) The accreditation of the course is taken to continue during the period stated in the approval for the purposes only of enabling the person to—
- (a) provide the course; or
  - (b) issue a higher education award in relation to the course.
- (5) The council may, in exceptional circumstances, direct the person to immediately stop conducting the operations mentioned in subsection (4).

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

*Note* 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).

- (6) If the council gives a direction to a person under subsection (4), the accreditation of the course is taken to be cancelled for all purposes from the day after the day the direction is given.

## **78 Registering end of accreditation**

If the accreditation of a higher education course ends (whether by expiry or cancellation), the council must remove the details of the course from the ACT register of higher education providers.

**79 Offence to falsely claim higher education course accredited**

- (1) A person other than a university who claims to provide a higher education course commits an offence if the course is not an accredited course.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), a person claims to provide a higher education course if the person—
- (a) makes that claim; or
  - (b) says or does anything likely to induce someone else to believe a course the person is providing is a higher education course.
- (3) An offence against this section is a strict liability offence.

## **Part 4.5 Disagreements under chapter 4**

### **80 Disagreement with decision of council under s 60 or s 73**

- (1) This section applies if an applicant disagrees with a decision of the council in relation to an application for—
  - (a) registration as a higher education provider under section 60 (Decision about registration as higher education provider); or
  - (b) accreditation of a course under section 73 (Decision about accreditation—higher education course).
- (2) The applicant may, within 14 days after the day the applicant is notified of the decision under section 105 (Notice of reviewable decisions), ask the council to refer the disagreement to a committee for resolution.
- (3) As soon as practicable after receiving the request for referral, the council must refer the disagreement to a committee.
- (4) Within 28 days after the day the committee receives the referral, the committee must attempt to resolve the disagreement and report to the council about the outcome.

## Chapter 5 Higher education—universities

### Part 5.1 Operation of universities in the ACT

#### 81 Universities to be established, recognised or approved

- (1) A person must not operate, or purport to operate, in the ACT as a university, or part of a university, unless the person is—
  - (a) established, recognised or approved as a university under this Act; or
  - (b) established under another law of the Territory; or
  - (c) established under a law of the Commonwealth or a State and not subject to a declaration under section 82.

Maximum penalty: 100 penalty units.

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

#### 82 Declaration that university may not operate in ACT

- (1) This section applies to a university that is established under a law of the Commonwealth or a State (other than a law of the Territory).
- (2) If the Minister is not satisfied that the university can meet the requirements of section 89 (Characteristics and role of university) in relation to its operations in the ACT, the Minister may declare, in writing, that the university must not operate, or purport to operate, in the ACT as a university, or part of a university, unless it is recognised under part 5.3 (Establishment or recognition of universities in the ACT).



**83 What is meant by operating as a university?**

- (1) For this chapter, a person operates in the ACT as a university, or part of a university, if the person—
  - (a) offers to provide a higher education course in the ACT as a university; or
  - (b) provides a higher education course in the ACT as a university; or
  - (c) claims to be able to provide a higher education course in the ACT as a university; or
  - (d) claims to be able to issue a higher education award in the ACT as a university.
- (2) For subsection (1), a person claims to be able to do a thing if the person—
  - (a) makes that claim; or
  - (b) says or does anything likely to induce someone else to believe that the person can do the particular thing.
- (3) A person is taken to operate in the ACT as a university, or part of a university, if the person does a thing mentioned in subsection (1)—
  - (a) as the agent of someone else; or
  - (b) under a franchise arrangement that applies to all or part of the ACT (whether or not it also applies to a place outside the ACT).
- (4) Also, a person is taken to operate in the ACT as a university, or part of a university, if the person does a thing mentioned in subsection (1) in or from the ACT by means of—
  - (a) a computer adapted for communicating by way of the internet or another communications network; or

- (b) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or other communications network; or
- (c) a telephone; or
- (d) any other electronic device.

**84 Who can use title of ‘university’?**

- (1) A person must not, by use of the title ‘university’, ‘university college’ or a similar title (whether alone or in combination with other titles), claim that the person is a university or part of a university unless the person is a university or part of a university, or is the agent of a university or part of a university.

Maximum penalty: 200 penalty units

- (2) This section does not apply to the University of the Third Age (U3A).
- (3) For this section, a person claims to be a university or part of a university if the person—
  - (a) makes that claim; or
  - (b) says or does anything likely to induce someone else to believe the person is a university or part of a university.
- (4) An offence against subsection (1) is a strict liability offence.

## Part 5.2 University advisory panels

### 85 Establishment of panel

- (1) The Minister must establish a *university advisory panel* if—
  - (a) the Minister receives a proposal under section 87 (Proposal for ACT university) or an application under section 94 (Application for approval as foreign university); and
  - (b) the council recommends that a panel be established to consider the proposal or application.
- (2) The Minister may also establish a university advisory panel for a review under section 93 (Review of operations of university).
- (3) A panel must consist of at least 3 people who, in the Minister's opinion, have substantial knowledge and experience of academic affairs or university management.
- (4) In establishing a panel, the Minister must consult with the council.

### 86 Panel guidelines

- (1) The Minister may, in consultation with the council, make guidelines for the consideration by a university advisory panel of proposals for the establishment or recognition of universities in the ACT and applications for approval by foreign universities.
- (2) The guidelines may include criteria for establishment, recognition or approval of a university.
- (3) The guidelines are a disallowable instrument.

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

## Part 5.3 Establishment or recognition of universities in the ACT

### 87 Proposal for ACT university

- (1) A corporation (a *proposed university*) may propose, in writing to the Minister, that it should be established, or recognised, in the ACT as a university.

*Note* If a form is approved under s 112 (Approved forms) for an approval, the form must be used.

- (2) The proposal must include—
  - (a) detailed information about how the proposed university has the characteristics, and fulfils the role, of a university; and
  - (b) any other information required under the regulations.
- (3) The proposed university must give the Minister any other information required by the Minister to consider the proposal.

### 88 Declaration of ACT university

- (1) On a proposal under section 87, the Minister must declare, in writing, that the proposed university is established or recognised as a university, or refuse to do so.
- (2) A declaration—
  - (a) may impose conditions on the establishment or recognition of the university, consistent with this chapter and the national protocols; and
  - (b) must state a period of establishment or recognition of no longer than 5 years.

- (3) A declaration is a disallowable instrument.

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

- (4) The Minister must not make a declaration about a proposed university unless—
- (a) the council has advised the Minister under section 89A (2) about the proposal; and
  - (b) the university advisory panel has reported to the Minister under section 91 about the proposal; and
  - (c) taking into consideration the panel's report, the Minister is satisfied the proposed university has the characteristics, and fulfils the role, of a university.
- (5) The Minister must give the proposed university a copy of a declaration.

## **89 Characteristics and role of university**

A proposed university has the characteristics, and fulfils the role, of a university if—

- (a) it meets the criteria for a university stated in the national protocols; and
- (b) it has appropriate accounting, financial and staffing resources in the ACT; and
- (c) it meets any relevant guidelines under section 86 (Panel guidelines); and
- (d) it satisfies any other reasonable requirements of the Minister.

## **89A Council to consider and advise on proposal**

- (1) After receiving a proposal from a proposed university for the establishment or recognition of a university in the ACT, the Minister

must refer the proposal to the council for advice about whether the proposed university meets—

- (a) the criteria for a university stated in the national protocols; and
  - (b) any relevant guidelines under section 86 (Panel guidelines).
- (2) If the council considers the proposal meets the criteria and guidelines mentioned in subsection (1), the council must—
- (a) advise the Minister accordingly; and
  - (b) make recommendations to the Minister about the composition of the advisory panel to be established under section 85 for the proposal.
- (3) If the council considers the proposal does not meet the criteria and guidelines mentioned in subsection (1)—
- (a) the council must advise the Minister accordingly; and
  - (b) the Minister may refuse, under section 88 (1), to declare that the proposed university is established or recognised.

## **90 Panel to consider proposal**

- (1) If the Minister receives advice from the council under section 89A (2), the Minister must refer the proposal to a university advisory panel.
- (2) The panel must decide the extent to which the proposed university has the characteristics, and fulfils the role, of a university.
- (3) The panel must consider—
  - (a) the proposal; and
  - (b) other information given to the Minister by the proposed university; and
  - (c) any other relevant information available; and
  - (d) any guidelines under section 86 (Panel guidelines).

- (4) In considering the proposal, the panel must consult with relevant academic, professional or industry bodies.

**91 Panel to report to Minister**

- (1) The university advisory panel must give a written report to the Minister about the proposal, within the time agreed between the Minister and the panel.
- (2) The report must include—
- (a) an analysis of the extent to which the proposed university has the characteristics, or fulfils the role, of a university; and
  - (b) the panel's recommendation about whether the proposed university should or should not be established or recognised as a university and its reasons for the recommendation; and
  - (c) any conditions on establishment or recognition recommended by the panel.

**92 Conditions of establishment or recognition of ACT university**

- (1) The establishment or recognition of a university under this part is subject to—
- (a) conditions imposed under subsection (2) ; and
  - (b) conditions imposed under section 88 (2) (Declaration of ACT university).
- (2) The following conditions of establishment or recognition of a university under this part are imposed on a university:
- (a) the university must comply with requirements stated to apply to universities under the national protocols;
  - (b) the university must, as far as practicable, give notice to the Minister of any proposed substantial change to the university's control, management or operations before the change happens;

- (c) the university must give notice to the Minister of any change mentioned in paragraph (b) immediately after the change happens.
  - (d) the university must not contravene a provision of this Act;
  - (e) the university must give to the Minister any information about any of its operations required by the Minister.
- (3) A university must not contravene a condition of its registration.

**93 Review of operations of university**

- (1) The Minister may at any time arrange for a review by a university advisory panel of the operation of a university established or recognised under this part.
- (2) If the Minister is satisfied after the review that it is in the interests of the students enrolled at the university or in the public interest to do so, the Minister may, in writing—
  - (a) amend the declaration of establishment or recognition of the university by imposing a condition; or
  - (b) suspend the declaration; or
  - (c) repeal the declaration.

*Note* An instrument under subsection (2) amending or repealing a declaration is a disallowable instrument (see Legislation Act, s 42) and must be notified and presented to the Legislative Assembly.



## **Part 5.4 Foreign universities in the ACT**

### **94 Application for approval as foreign university**

- (1) A foreign university may apply to the Minister for approval under this part as a university.

*Note* If a form is approved under s 112 (Approved forms) for an application, the form must be used.

- (2) The university must give the Minister—
  - (a) information about its recognition by the relevant accreditation body in the country where it is established; and
  - (b) any other information required by the Minister to decide the application.

### **94A Council to consider and advise on application**

- (1) After receiving an application from a foreign university under this part, the Minister must refer the application to the council for advice about whether the university meets—
  - (a) the criteria for a university stated in the national protocols; and
  - (b) any relevant guidelines under section 86 (Panel guidelines).
- (2) If the council considers the application meets the criteria and guidelines mentioned in subsection (1), the council must—
  - (a) advise the Minister accordingly; and
  - (b) make recommendations to the Minister about the composition of the advisory panel to be established under section 85 for the application.
- (3) If the council considers the application does not meet the criteria and guidelines mentioned in subsection (1)—
  - (a) the council must advise the Minister accordingly; and

- (b) the Minister may refuse, under section 95 (1), to approve the university as a foreign university.

## **95 Decision about approval as foreign university**

- (1) On an application for approval, the Minister may give the approval to the university, or refuse to do so.
- (2) An approval may be given subject to conditions stated in the approval that are consistent with this chapter and the national protocols.
- (3) An approval under this section is a disallowable instrument.

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

- (4) The Minister must not give approval unless—
  - (a) the council has advised the Minister under section 94A (2) about the application; and
  - (b) the Minister has consulted with a university advisory panel about the application; and
  - (c) the Minister is satisfied about—
    - (i) the legal status of the university and its standing in the country where it is established (including recognition by the relevant accreditation body); and
    - (ii) the adequacy of the proposed arrangements for the university's operation in the ACT, having regard to the national protocols.

## **96 Period of approval—foreign university**

Approval as a foreign university may be for a period of up to 5 years, and may be renewed if application for renewal is made at least 6 months before the day the approval ends.

**97 Conditions of foreign university approval**

- (1) The approval of a foreign university under this part is subject to—
  - (a) conditions imposed under subsection (2) ; and
  - (b) conditions imposed under section 95 (2) (Decision about approval as foreign university).
- (2) The following conditions of approval under this part are imposed on a foreign university:
  - (a) the university must comply with requirements stated to apply to universities under the national protocols;
  - (b) the university must, as far as practicable, give notice to the Minister of any proposed substantial change to the university's control, management or operations before the change happens;
  - (c) the university must give notice to the Minister of any change mentioned in paragraph (b) immediately after the change happens;
  - (d) the university must not contravene a provision of this Act;
  - (e) the university must give to the Minister any information about any of its operations required by the Minister.
- (3) A university must not contravene a condition of its registration.

**98 Review of operations of foreign university**

- (1) The Minister may at any time arrange for a review by a university advisory panel of the operation of a foreign university approved under this part.
- (2) If the Minister is satisfied after the review that it is in the interests of the students enrolled at the university or in the public interest to do so, the Minister may, in writing—
  - (a) amend the approval by imposing a condition; or

- (b) suspend the approval; or
- (c) repeal the approval.

*Note* An instrument under subsection (2) amending or repealing a declaration is a disallowable instrument (see Legislation Act, s 42) and must be notified and presented to the Legislative Assembly.

## **Chapter 6            General**

### **Part 6.1            Visits to premises**

#### **99            Visits by council—RTO premises**

- (1) The council may give an RTO written notice that a council member, a staff member of the council or a person authorised by the council proposes to visit premises where the RTO is giving, or proposing to give, vocational education and training courses.
- (2) A notice under subsection (1) must—
  - (a) state the address of the premises proposed to be visited; and
  - (b) state the purpose of the visit; and
  - (c) state the day and time of the proposed visit; and
  - (d) be given to the RTO 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 RTO 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 the operations of the RTO on the premises; or
  - (c) ask the RTO to give information about its operations; or
  - (d) ask the RTO to produce any document in the possession of the RTO containing information about courses given, or proposed to be given, on the premises.

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

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

*Note* 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).

**99A Visits by chief executive—training contract premises**

- (1) The chief executive may give an employer written notice that a person authorised by the chief executive 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 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.
- (5) An authorised person may, in exceptional circumstances, do a thing mentioned in subsection (4) (a) to (d) without notice.

**Example of exceptional circumstances**

danger of injury to anyone's health or safety

*Note* 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).

## **100 Visits by council—higher education provider premises**

- (1) The council may give a registered higher education provider written notice that a council member, a staff member of the council or a person authorised by the council proposes to visit premises where the provider is conducting, or proposing to conduct, higher education courses.
- (2) A 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 higher education provider 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 higher education provider 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 the operations of the higher education provider; or
  - (c) ask the higher education provider to give information about its operations; or
  - (d) ask the higher education provider to produce any document in the possession of the provider containing information relating courses given, proposed to be given or previously given, on the premises.
- (5) A member, staff member or authorised person may, in exceptional circumstances, do a thing mentioned in subsection (4) (a) to (d) without notice.

**Example of exceptional circumstance**

danger of injury to anyone's health or safety

*Note* 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).

## 101 Identity cards

- (1) The relevant authority may give a person who may conduct visits under this part an identity card that states the person's name and position, and shows—
- (a) the date of issue of the card; and
  - (b) the date of expiry of the card; and
  - (c) anything else prescribed by regulation.



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

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

*relevant authority* means—

- (a) for a visit under section 99 or section 100—the council; and
- (b) for a visit under section 99A—the chief executive.

## **102 Production of identity card**

A person who has entered premises under this part must not remain on the premises if, on request by the occupier, the person, or someone accompanying that person, does not produce his or her identity card.

## **103 Obstructing visits—council**

- (1) This section applies if the council is satisfied that an RTO or registered higher education provider—
- (a) without reasonable excuse, obstructs or hinders a person entering premises or observing a course under this part; or
- (b) refuses to give information, or gives information that the higher education provider knows is false or misleading, in response to a request under this part; or
- (c) refuses to produce a document, or produces a document that the higher education provider knows contains false or misleading information, in response to a request under this part.

- (2) The council may suspend or cancel the registration of the RTO or registered higher education provider.

**103A      Obstructing visits—chief executive**

- (1) This section applies if the chief executive is satisfied that an employer—
- (a) without reasonable excuse, obstructs or hinders a person entering premises or observing training under section 99A (4) (a) or (b) (Visits by chief executive—training contract premises); or
  - (b) refuses to give information, or gives information that the employer knows is false or misleading in response to a request under section 99A (4) (c); or
  - (c) refuses to produce a document, or produces a document that the employer knows contains false or misleading information, in response to a request under section 99A (4) (d).
- (2) The chief executive may suspend or cancel the approval of, or amend, any approved training contract to which the employer is a party.

## Part 6.2 Review of decisions

### 104 Definition for pt 6

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in schedule 1, column 2 in relation to the decision.

### 105 Notice of reviewable decisions

- (1) If the council or the Minister makes a reviewable decision, the council or the Minister (as the case requires) must give written notice of the decision and the reasons for the decision to each person mentioned in schedule 1, column 4 in relation to the decision.
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### 106 Review by AAT of reviewable decisions

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

### 107 Modification of Administrative Appeals Tribunal Act, s 27

- (1) This section applies in relation to a reviewable decision to which section 55 (Disagreement with decision of council under s 33 or s 48) or section 80 (Disagreement with decision of council under s 60 or s 73) applies.
- (2) A person is not entitled to apply under section 106 for review of a decision—
  - (a) until after the end of the period when a request under section 55 (2) or 80 (2) may be made; or

- (b) if a request under section 55 (2) or 80 (2) has been made, until the earlier of—
  - (i) the day the person who made the request is notified of the outcome of the attempt to resolve the disagreement; or
  - (ii) the day after the end of the period mentioned in section 55 (4) or 80 (4).
- (3) If a request has been made under section 55 (2) or 80 (2) in relation to a decision, the prescribed time for lodging an application with the AAT is the period beginning on the day when the person who made the request becomes entitled under subsection (2) (b) to make the application and ending on the 28th day after that day.

## Part 6.3 Other provisions

### 108 CRICOS approval

- (1) For the purposes of the *Education Services for Overseas Students Act 2000* (Cwlth), section 5, definition of *designated authority* the council chairperson is the person responsible for approving providers to provide courses to overseas students in the Territory.
- (2) In this section:  
*CRICOS* means the Commonwealth Register of Institutions and Courses for Overseas Students under the *Education Services for Overseas Students Act 2000* (Cwlth), section 10.

### 110 Protection from civil liability

- (1) A person exercising a function under this Act does not incur civil liability for an act or omission done honestly and without negligence for this Act.
- (2) Civil liability that would, apart from this section, attach to a person attaches instead to the Territory.

### 111 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.  
*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).
- (2) A determination is a disallowable instrument.  
*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 112 Approved forms

- (1) The council may approve forms for this Act (other than chapter 3A).

- (2) The chief executive may approve forms for chapter 3A.
- (3) If the council or chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

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

- (4) An approved form is a notifiable instrument.

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

### **113      Regulation-making power**

- (1) The Executive may make regulations for this Act.

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

- (2) The regulations may provide for the registration of details in the national register or the ACT register of higher education providers not otherwise expressly provided for in this Act.

## Schedule 1 Reviewable decisions

(see s 104)

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
1	33 (1) (Decision about registration as RTO)	refusing to register training organisation	applicant for registration
2	33 (6)	registering training organisation subject to conditions	applicant for registration
3	37 (1) (Amending registration on application by RTO)	refusing to amend registered details of RTO	RTO
4	38 (2) (a) or (b) (Amending, suspending or cancelling RTO registration without application)	amending scope or conditions of registration	RTO

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
5	38 (2) (c)	suspending registration or part of scope of registration	RTO
6	38 (2) (d)	cancelling registration	RTO
7	39 (1) (Cancelling RTO registration on change of location of operations)	cancelling registration	RTO
8	41 (2) (Suspension of registration—training or assessment previously agreed)	refusing to approve training or assessment	RTO
9	42 (2) (Cancellation of registration—training or assessment previously agreed)	refusing to approve training or assessment	RTO



<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
10	48 (1) (Decision about accreditation—vocational course)	refusing to accredit vocational education and training course	applicant
11	51 (Cancelling accreditation—vocational course)	cancelling accreditation of vocational education course	each provider of course
12	52 (2) (Cancellation of accreditation—vocational course previously agreed)	refusing to approve course	each provider of course
13	55B (1) (Approval of training contract)	refusing to approve a training contract	applicant for approval
14	55B (3)	approving a training contract subject to conditions	applicant for approval
15	55G (2) (a) (Party may ask for amendment)	approving an amendment of an approved training contract	each party to the contract

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
16	55G (2) (b)	refusing to approve an amendment of approved training contract	each party to the contract
17	55H (Chief executive may suspend, cancel or amend contract)	suspending or cancelling approval of a training contract	each party to the contract
18	55H	amending an approved training contract	each party to the contract
19	55I (5) (a)	making a finding of fact about a matter in relation to a training contract	each party to the contract
20	55I (5) (b)	amending an approved training contract	each party to the contract
21	55I (5) (c)	giving directions to a party to an approved training contract	each party to the contract
22	60 (1) (Decision about registration as higher education provider)	refusing to register higher education provider	applicant

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
23	60 (5)	registering higher education provider subject to conditions	applicant
24	65 (1) (Amending or cancelling registration on application by higher education provider)	refusing to amend registered details of higher education provider	registered higher education provider
25	66 (1) (a) (Amending, suspending or cancelling registration without application—higher education provider)	amending scope or conditions of registration	registered higher education provider
26	66 (1) (b)	suspending registration or part of scope of registration	registered higher education provider
27	66 (1) (c)	cancelling registration	registered higher education provider

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
28	68 (2) (Suspension of registration— higher education course previously agreed)	refusing to approve course	registered higher education provider and each provider of the course
29	69 (2) (Cancellation of registration— higher education course previously agreed)	refusing to approve course	registered higher education provider and each provider of the course
30	73 (1) (Decision about accreditation —higher education course)	refusing to accredit higher education course	applicant
31	76 (2) (Cancelling accreditation —higher education course)	cancelling accreditation of higher education course	registered higher education provider each provider of the course

<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
32	77 (2) (Cancellation of accreditation—higher education course previously agreed)	refusing to approve course	registered higher education provider and each provider of course
33	88 (Declaration of ACT university)	refusing to declare that a university is established or recognised	proposed university
34	93 (2) (a) (Review of operations of university)	amending declaration of establishment or recognition by imposing condition	university
35	98 (2) (a) (Review of operations of foreign university)	amending approval by imposing conditions	university
36	103 (2) (Obstructing visits—council)	suspending or cancelling registration	RTO or higher education provider
37	103A (2) (Obstructing visits—chief executive)	suspending or cancelling approval of an approved training contract	each party to the contract

**Schedule 1**      Reviewable decisions

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<b>column 1 item</b>	<b>column 2 Act provision</b>	<b>column 3 reviewable decision</b>	<b>column 4 person to be notified</b>
38	103A (2)	amending an approved training contract	each party to the contract

## Dictionary

(see s 4)

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

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

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

***accredited course*** means a course that—

- (a) leads to a qualification under the AQF; and
- (b) for a vocational education and training course—is registered as an accredited course under chapter 3; and
- (c) for a higher education course—is registered as an accredited course under chapter 4.

***accreditation*** includes renewed accreditation.

***approved training contract*** means a training contract approved by the chief executive under section 55B (Approval of training contract).

***AQF*** means the policy framework entitled ‘Australian Qualifications Framework’ that defines all qualifications (whether as defined under this Act or otherwise) recognised nationally in education and training within Australia, endorsed by MINCO to commence on 1 January 1995, as in force from time to time.

***AQTF*** means the policy framework entitled ‘Australian Quality Training Framework’ that defines the criteria and standards for the registration of training organisations and the accreditation of courses

in the vocational education and training sector endorsed by MINCO on 8 June 2001, as in force from time to time.

**committee** means a committee established by the council under section 21.

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

**compliance audit** means—

- (a) for a RTO—an audit, including if necessary a site visit, conducted by or for the council or another registering body to establish whether the RTO complies with the RTO standards, except any legislative compliance standard; or
- (b) for a registered higher education provider—an audit, including if necessary a site visit, conducted by or for the council to establish whether the provider complies with the higher education standards, except any legislative compliance standard.

**corresponding law** means—

- (a) for chapter 3 (Vocational education and training)—
  - (i) if a regulation prescribes a law of another jurisdiction as a corresponding law—that law; or
  - (ii) in any other case—a law of another jurisdiction that corresponds to chapter 3; and
- (b) for a provision of chapter 3—the provision of a corresponding law of another jurisdiction under paragraph (a) that corresponds to the provision of chapter 3.

**council**—means the Accreditation and Registration Council established under section 7.

**course accrediting body** means the council or a body equivalent to the council in another jurisdiction responsible for the administration



of the accreditation of courses under that jurisdiction's legislation relating to vocational education and training or higher education.

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

**foreign university** means a university that is—

- (a) established in a foreign country; and
- (b) recognised as a university by the authority in the foreign country that, in the Minister's opinion, is the competent authority for the purpose.

**franchise arrangement** means an agreement or other arrangement between 2 or more people by which one of them (the **franchisor**) authorises or permits another (the **franchisee**)—

- (a) to engage in the business of offering, selling or distributing goods and services within or partly within the ACT, if the franchisee is required to do so—
  - (i) in accordance with a particular marketing, business or technical plan or system; and
  - (ii) under a common format or procedure (or format and procedure); and
- (b) to use a mark or common trade name, in such a way that the business carried on by the franchisee is, or can be, identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a related person.

**higher education award** means—

- (a) a degree, status, title or description of bachelor, master or doctor; or
- (b) any other award that is described as a 'degree'; or
- (c) an award of graduate diploma or graduate certificate; or

(d) any other award described in AQF as a higher education award.

**higher education course** means a course of study that entitles a person who satisfies the course requirements to the conferral of a higher education award.

**higher education provider** means a provider of courses leading to higher education awards, other than a university.

**higher education standards** means the following, to the extent that they are relevant to higher education providers:

- (a) the national protocols;
- (b) the RTO standards and the standards for State and Territory registering and course accrediting bodies;
- (c) any other standard for higher education that the Minister determines in writing for this paragraph.

**jurisdiction** means the Territory or, if it has enacted a corresponding law, a State.

**legislative compliance standard** means a standard included in the RTO standards or the higher education standards requiring that an RTO or higher education provider ensures that compliance with Commonwealth, State and Territory legislation and regulatory requirements relevant to its operations is integrated into its policies and procedures and that such compliance is maintained.

*Note* On commencement of this definition, the relevant RTO standard was standard 2.

**ministerial council** means a council consisting of the Ministers from the Territory, each State and the Commonwealth responsible for employment, education, training and youth affairs.

**nationally agreed training contract**—see section 55B (4).

**nationally endorsed**, for a training package, means endorsed by the committee known as the national training quality committee established by MINCO.

***national protocols*** means the National Protocols for Higher Education Approval Processes endorsed by the ministerial council on education, employment, training and youth affairs, as in force from time to time.

*Note* The national protocols were originally approved on 31 March 2000 and a revised edition was approved on 7 July 2006. The revised edition is to come into effect in December 2007.

***national register*** means the National Training Information Service maintained by ANTA, to the extent that it consists of a register of people or matters registered under this Act or corresponding laws.

***national training framework*** means the policy framework, comprising the AQTF and the concept of training packages, endorsed by MINCO in September 1996, and that policy framework and concept of training packages as in force from time to time.

***prohibition*** means a prohibition on all or some of the operations of an RTO, higher education provider or university.

***qualification*** means formal certification in the vocational education and training sector by an RTO and under the AQF that a person has achieved all the units of competencies or modules comprising learning outcomes stated for the qualification in—

- (a) a nationally endorsed training package for which details of the qualification have been registered by ANTA; or
- (b) an accredited course that provides training for the qualification.

***registered*** means—

- (a) for a training organisation—registered under chapter 3; and
- (b) for a higher education provider—registered under chapter 4.

***registered training organisation*** means a person whose details as a training organisation are registered.

***registering body*** means the council or a body equivalent to the council in another jurisdiction that is responsible for the registration

of training organisations under the corresponding law of that jurisdiction.

**registration** includes renewed registration.

**restriction** means a restriction on all or some of the operations of an RTO, higher education provider or university, or a prohibition.

**RTO** means a registered training organisation.

**RTO standards** means the standards for registered training organisations and, to the extent that they are relevant to an RTO, the standards for State and Territory registering and course accreditation bodies.

**scope of registration**—

- (a) for an RTO—see section 31; or
- (b) for a higher education provider—see section 58.

**standards for accreditation of courses** means the standards for accreditation of courses adopted on 8 June 2001 by MINCO under the AQTF, as in force from time to time.

**standards for registered training organisations** means the standards for registered training organisations adopted on 8 June 2001 by MINCO under the AQTF, as in force from time to time.

**standards for State and Territory registering and course accrediting bodies** means the standards for State and Territory registering bodies and course accrediting bodies adopted on 8 June 2001 by MINCO under the AQTF, as in force from time to time.

**statement of attainment** means formal certification in the vocational education and training sector by an RTO under the AQF that a person has achieved—

- (a) part of a qualification; or

- (b) 1 or more units of competency from a nationally endorsed training package; or
- (c) all the units of competency or modules comprising learning outcomes for an accredited course that does not meet the requirements for a qualification.

***trades and labour council*** means the Trades and Labour Council of the Australian Capital Territory Incorporated.

***trainee*** means a person who undertakes training under a training contract, and includes an apprentice.

***training package*** means an integrated set of competency standards and assessment guidelines leading to a qualification for a particular industry, industry sector or enterprise.

***unit of competency*** means a specification of knowledge and skill and their application to a particular standard of performance.

***university*** means—

- (a) a provider of higher education that is—
  - (i) established or recognised as a university under this Act or another law of the Territory, the Commonwealth or a State; and
  - (ii) listed as a university on the AQF register; or
- (b) a foreign university.

***university advisory panel***—see section 85 (Establishment of panel).

***vocational education and training*** means the education and training and qualifications and statements of attainment under the vocational education and training provisions of the AQF.

***vocational education and training course*** means a course leading to a qualification or statement of attainment.

***work-related training*** means a sequence of vocational education and training that is determined by the chief executive under section 55A to be work-related training.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Training and Tertiary Education Act 2003* was originally the *Tertiary Accreditation and Registration Act 2003*. It was renamed by the *Training and Tertiary Education Legislation Amendment Act 2007 A2007-12* (see s 4).

#### **Training and Tertiary Education Act 2003 A2003-36**

notified LR 8 September 2003  
s 1, s 2 commenced 8 September 2003 (LA s 75 (1))  
remainder commenced 1 November 2003 (s 2)

as amended by

#### **Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.34**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.34 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

#### **Statute Law Amendment Act 2004 A2004-42 sch 3 pt 3.18**

notified LR 11 August 2004  
s 1, s 2 commenced 11 August 2004 (LA s 75 (1))  
sch 3 pt 3.18 commenced 25 August 2004 (s 2 (1))

#### **Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.68**

notified LR 12 May 2005  
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))  
sch 3 pt 3.68 commenced 2 June 2005 (s 2 (1))

#### **Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.97**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.97 commenced 12 April 2007 (s 2 (1))

#### **Training and Tertiary Education Legislation Amendment Act 2007 A2007-12**

notified LR 13 June 2007  
s 1, s 2 commenced 13 June 2007 (LA s 75 (1))  
remainder commenced 1 July 2007 (s 2 and CN2007-3)



## 4 Amendment history

**Name of Act**

s 1 sub A2007-12 s 4

**Commencement**

s 2 om LA s 89 (4)

**Functions of council**

s 8 am A2007-12 s 5, s 6

**Ministerial directions to council**

s 9 am A2004-9 amdt 1.46

**Council to have regard to authority's views**

s 11 om A2007-12 s 7

**Membership of council**

s 12 am A2007-12 ss 8-10; ss renum R7 LA

**Council's annual report**

s 18 sub A2004-9 amdt 1.47

**Council procedures**

s 20 am A2007-12 s 11; ss renum R7 LA

**Expert committee for pt 3.5**

s 49 am A2007-3 amdt 3.487

**Work-related training and training contracts**

ch 3A hdg ins A2007-12 s 12

**Determination of work-related training**

s 55A ins A2007-12 s 12

**Approval of training contract**

s 55B ins A2007-12 s 12

**Application for approval**

s 55C ins A2007-12 s 12

**Training contracts for qualification or statement of attainment**

s 55D ins A2007-12 s 12

**Training must be under approved training contract**

s 55E ins A2007-12 s 12

**Code of practice**

s 55F ins A2007-12 s 12

**Party may ask for amendment**

s 55G ins A2007-12 s 12

## Endnotes

4 Amendment history

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**Chief executive may suspend, cancel or amend contract**

s 55H ins A2007-12 s 12

**Dispute between employer and trainee**

s 55I ins A2007-12 s 12

**Expert committee for pt 4.3**

s 62 am A2005-20 amdt 3.410

**Expert committee for pt 4.4**

s 74 am A2007-3 amdt 3.487

**Establishment of panel**

s 85 am A2007-12 s 13

**Declaration of ACT university**

s 88 am A2007-12 s 14

**Council to consider and advise on proposal**

s 89A ins A2007-12 s 15

**Panel to consider proposal**

s 90 am A2007-12 s 16, s 17; pars renum R7 LA

**Council to consider and advise on application**

s 94A ins A2007-12 s 18

**Decision about approval as foreign university**

s 95 am A2007-12 s 19

**Visits by chief executive—training contract premises**

s 99A ins A2007-12 s 20

**Identity cards**

s 101 am A2007-12 ss 21-23

**Obstructing visits—council**

s 103 hdg sub A2007-12 s 24

s 103 am A2004-42 amdt 3.86

**Obstructing visits—chief executive**

s 103A ins A2007-12 s 25

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

s 107 am A2007-12 s 26

**CRICOS approval**

s 108 sub A2007-12 s 27

**Alternative verdict for offence against s 108**

s 109 om A2007-12 s 27

**Approved forms**

s 112 sub A2007-12 s 28

<b>Transitional</b>	
ch 7 hdg	exp 30 October 2004 (s 118)
<b>Details on national register on commencement</b>	
s 114	exp 30 October 2004 (s 118)
<b>Registration of transitional RTOs</b>	
s 115	exp 30 October 2004 (s 118)
<b>Accreditation of transitional vocational and higher education courses</b>	
s 116	exp 30 October 2004 (s 118)
<b>Modification of ch 7's operation</b>	
s 117	exp 30 October 2004 (s 118)
<b>Expiry of ch 7</b>	
s 118	exp 30 October 2004 (s 118)
<b>Transitional</b>	
ch 10 hdg	ins A2007-12 s 29 exp 1 July 2008 (s 203)
<b>Definitions—ch 10</b>	
s 200	ins A2007-12 s 29 exp 1 July 2008 (s 203 (LA s 88 declaration applies)) def <b>commencement day</b> ins A2007-12 s 29 def <b>repealed Act</b> ins A2007-12 s 29
<b>Training contracts</b>	
s 201	ins A2007-12 s 29 exp 1 July 2008 (s 203 (LA s 88 declaration applies))
<b>Transitional regulations</b>	
s 202	ins A2007-12 s 29 exp 1 July 2008 (s 203 (LA s 88 declaration applies))
<b>Expiry—ch 10</b>	
s 203	ins A2007-12 s 29 exp 1 July 2008 (s 203 (LA s 88 declaration applies))
<b>Reviewable decisions</b>	
sch 1	am A2007-12 s 30, s 31; items renum R7 LA
<b>Dictionary</b>	
dict	def <b>ANTA</b> om A2007-12 s 32 def <b>approved training contract</b> ins A2007-12 s 33 def <b>AQF</b> am A2007-12 s 42 def <b>AQTF</b> am A2007-12 s 42 def <b>authority</b> om A2007-12 s 34 def <b>employer</b> ins A2007-12 s 35 def <b>MINCO</b> om A2007-12 s 36 def <b>nationally agreed training contract</b> ins A2007-12 s 37

## Endnotes

### 5 Earlier replications

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def ***national protocols*** am A2007-12 s 38, s 39  
def ***national training framework*** am A2007-12 s 42  
def ***standards for accreditation of courses*** am A2007-12 s 42  
def ***standards for registered training organisations*** am A2007-12 s 42  
def ***standards for State and Territory registering and course accrediting bodies*** am A2007-12 s 42  
def ***trainee*** ins A2007-12 s 40  
def ***work-related training*** ins A2007-12 s 41

## 5 Earlier replications

Some earlier replications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised replications have also been published in printed format. These replications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Replication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Replication for</b>
R1 1 Nov 2003	1 Nov 2003– 12 Apr 2004	not amended	new Act
R2 13 Apr 2004	13 Apr 2004– 24 Aug 2004	A2004-9	amendments by A2004-9
R3 25 Aug 2004	25 Aug 2004– 30 Oct 2004	A2004-42	amendments by A2004-42
R4 31 Oct 2004	31 Oct 2004– 1 June 2005	A2004-42	commenced expiry
R5 2 June 2005	2 June 2005– 11 Apr 2007	A2005-20	amendments by A2005-20
R6 12 Apr 2007	2 Apr 2007– 30 June 2007	A2007-3	amendments by A2007-3
R7 1 July 2007	1 July 2007– 1 July 2008	A2007-12	renaming and other amendments by A2007-12

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