



Australian Capital Territory

# Training and Tertiary Education Legislation Amendment Act 2007

A2007-12

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Section 1	2
5 Functions of council	
Section 8 (1) (d)	3
6 Section 8 (1) (e) (i) and (ii)	3
7 Council to have regard to authority's views	
Section 11	3
8 Membership of council	
Section 12 (1) (c)	3
9 Section 12 (1) (g)	3
10 Section 12 (2)	3
11 Council procedures	
New section 20 (5A)	4
12 New chapter 3A	4

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J2005-1053

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## Contents

		Page
13	Establishment of panel Section 85 (1)	9
14	Declaration of ACT university Section 88 (4)	9
15	New section 89A	10
16	Panel to consider proposal Section 90 (1)	10
17	Section 90 (3) (c)	11
18	New section 94A	11
19	Decision about approval as foreign university Section 95 (4) and (5)	12
20	New section 99A	12
21	Identity cards Section 101 (1)	14
22	Section 101 (2)	14
23	New section 101 (4)	14
24	Section 103 heading	15
25	New section 103A	15
26	Modification of Administrative Appeals Tribunal Act, s 27 Section 107 (2)	16
27	Sections 108 and 109	16
28	Section 112	16
29	New chapter 10	17
30	Reviewable decisions Schedule 1, new items 12A to 12I	18
31	Schedule 1, new items 28 and 29	19
32	Dictionary, definition of <i>ANTA</i>	20
33	Dictionary, new definition of <i>approved training contract</i>	20
34	Dictionary, definition of <i>authority</i>	20
35	Dictionary, new definition of <i>employer</i>	20
36	Dictionary, definition of <i>MINCO</i>	20
37	Dictionary, new definition of <i>nationally agreed training contract</i>	20
38	Dictionary, definition of <i>national protocols</i>	20
39	Dictionary, definition of <i>national protocols</i> , notes 1 and 2	21
40	Dictionary, new definition of <i>trainee</i>	21

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		Page
41	Dictionary, new definition of <i>work-related training</i>	21
42	Further amendments, dictionary definitions	21
43	Legislation repealed	22
<b>Schedule 1</b>	<b>Consequential amendments</b>	<b>23</b>
<b>Part 1.1</b>	<b>Agents Regulation 2003</b>	<b>23</b>
<b>Part 1.2</b>	<b>Annual Leave Act 1973</b>	<b>24</b>
<b>Part 1.3</b>	<b>Board of Senior Secondary Studies Act 1997</b>	<b>24</b>
<b>Part 1.4</b>	<b>Building and Construction Industry Training Levy Act 1999</b>	<b>25</b>
<b>Part 1.5</b>	<b>Canberra Institute of Technology Act 1987</b>	<b>25</b>
<b>Part 1.6</b>	<b>Construction Occupations (Licensing) Regulation 2004</b>	<b>25</b>
<b>Part 1.7</b>	<b>Crimes (Child Sex Offenders) Act 2005</b>	<b>26</b>
<b>Part 1.8</b>	<b>Domestic Violence and Protection Orders Act 2001</b>	<b>27</b>
<b>Part 1.9</b>	<b>Long Service Leave Act 1976</b>	<b>27</b>
<b>Part 1.10</b>	<b>Payroll Tax Act 1987</b>	<b>27</b>
<b>Part 1.11</b>	<b>Security Industry Act 2003</b>	<b>28</b>
<b>Part 1.12</b>	<b>Security Industry Regulation 2003</b>	<b>28</b>
<b>Part 1.13</b>	<b>Tertiary Accreditation and Registration Regulation 2004</b>	<b>29</b>





Australian Capital Territory

# Training and Tertiary Education Legislation Amendment Act 2007

A2007-12

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An Act to amend the *Tertiary Accreditation and Registration Act 2003*, and for other purposes

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

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J2005-1053

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## **1 Name of Act**

This Act is the *Training and Tertiary Education Legislation Amendment Act 2007*.

## **2 Commencement**

This Act commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

## **3 Legislation amended**

This Act amends the *Tertiary Accreditation and Registration Act 2003*.

*Note 1* This Act also amends other legislation (see sch 1).

*Note 2* This Act also repeals the *Vocational Education and Training Act 2003* (see s 43).

## **4 Section 1**

*substitute*

### **1 Name of Act**

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

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**5 Functions of council  
Section 8 (1) (d)**

*substitute*

- (d) to facilitate recognition and quality assurance in the provision of vocational education and training;

**6 Section 8 (1) (e) (i) and (ii)**

*substitute*

- (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

**7 Council to have regard to authority's views  
Section 11**

*omit*

**8 Membership of council  
Section 12 (1) (c)**

*omit*

2

*substitute*

3

**9 Section 12 (1) (g)**

*omit*

**10 Section 12 (2)**

*omit*

**11 Council procedures  
New section 20 (5A)**

*insert*

- (5A) 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).

**12 New chapter 3A**

*insert*

## **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).

---

**13 Establishment of panel  
Section 85 (1)**

*substitute*

- (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.

**14 Declaration of ACT university  
Section 88 (4)**

*substitute*

- (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.

**15 New section 89A**

*insert*

**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.

**16 Panel to consider proposal  
Section 90 (1)**

*substitute*

- (1) If the Minister receives advice from the council under section 89A (2), the Minister must refer the proposal to a university advisory panel.

---

**17 Section 90 (3) (c)**

*omit*

**18 New section 94A**

*insert*

**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.

**19 Decision about approval as foreign university  
Section 95 (4) and (5)**

*substitute*

- (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.

**20 New section 99A**

*insert*

**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).

**21 Identity cards  
Section 101 (1)**

*substitute*

- (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.

**22 Section 101 (2)**

*omit*

the council

*substitute*

the relevant authority

**23 New section 101 (4)**

*insert*

- (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.

---

**24 Section 103 heading**

*substitute*

**103 Obstructing visits—council****25 New section 103A**

*in part 6.1, insert*

**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.

**26 Modification of Administrative Appeals Tribunal Act, s 27  
Section 107 (2)**

*omit*

section 111

*substitute*

section 106

**27 Sections 108 and 109**

*substitute*

**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.

**28 Section 112**

*substitute*

**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.

## 29 New chapter 10

*insert*

# Chapter 10 Transitional

## 200 Definitions—ch 10

In this chapter:

*commencement day* means the day this Act commences.

*repealed Act* means the *Vocational and Education Training Act 2003*.

## 201 Training contracts

- (1) A contract that was an approved training contract under the repealed Act immediately before the commencement day is taken to be approved as a training contract under section 55B (Approval of training contract).
- (2) If a suspension of approval of the agreement or an amendment of the agreement is in force immediately before the commencement day, the suspension or amendment has effect as if the approval had been suspended, or the agreement amended, under chapter 3A (Work-related training and training contracts).

## 202 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

### 203 Expiry—ch 10

- (1) This chapter is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (2) This chapter expires 1 year after the commencement day.

## 30 Reviewable decisions Schedule 1, new items 12A to 12I

*insert*

12A	55B (1) (Approval of training contract)	refusing to approve a training contract	applicant for approval
12B	55B (3)	approving a training contract subject to conditions	applicant for approval
12C	55G (2) (a) (Party may ask for amendment)	approving an amendment of an approved training contract	each party to the contract
12D	55G (2) (b)	refusing to approve an amendment of approved training contract	each party to the contract

12E	55H (Chief executive may suspend, cancel or amend contract)	suspending or cancelling approval of a training contract	each party to the contract
12F	55H	amending an approved training contract	each party to the contract
12G	55I (5) (a)	making a finding of fact about a matter in relation to a training contract	each party to the contract
12H	55I (5) (b)	amending an approved training contract	each party to the contract
12I	55I (5) (c)	giving directions to a party to an approved training contract	each party to the contract

### **31 Schedule 1, new items 28 and 29**

*insert*

28	103A (2) (Obstructing visits—chief executive)	suspending or cancelling approval of an approved training contract	each party to the contract
29	103A (2)	amending an approved training contract	each party to the contract

**32 Dictionary, definition of *ANTA***

*omit*

**33 Dictionary, new definition of *approved training contract***

*insert*

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

**34 Dictionary, definition of *authority***

*omit*

**35 Dictionary, new definition of *employer***

*insert*

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

**36 Dictionary, definition of *MINCO***

*omit*

**37 Dictionary, new definition of *nationally agreed training contract***

*insert*

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

**38 Dictionary, definition of *national protocols***

*omit*

on 31 March 2000



**39 Dictionary, definition of *national protocols*, notes 1 and 2**

*substitute*

*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.

**40 Dictionary, new definition of *trainee***

*insert*

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

**41 Dictionary, new definition of *work-related training***

*insert*

*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.

**42 Further amendments, dictionary definitions**

*omit notes 1 and 2 from the following definitions:*

- *AQF*
- *AQTF*
- *national protocols*
- *national training framework*
- *standards for accreditation of courses*
- *standards for registered training organisations*
- *standards for State and Territory registering and course accrediting bodies*

**43**      **Legislation repealed**

- (1) The *Vocational Education and Training Act 2003* A2003-37 is repealed.
- (2) All legislative instruments under the *Vocational Education and Training Act 2003* are repealed.

## **Schedule 1      Consequential amendments**

(see s 3)

### **Part 1.1              Agents Regulation 2003**

#### **[1.1]      Section 3, note 1**

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

#### **[1.2]      Section 6 (4)**

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

#### **[1.3]      Dictionary, definition of *registered training organisation***

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**[1.4] Dictionary, definition of *statement of attainment***

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**Part 1.2 Annual Leave Act 1973**

**[1.5] Dictionary, definition of *approved training contract***

*omit*

*Vocational Education and Training Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**Part 1.3 Board of Senior Secondary Studies Act 1997**

**[1.6] Section 8 (1) (c)**

*substitute*

- (c) 1 person appointed after consultation with vocational education and training organisations;

## **Part 1.4 Building and Construction Industry Training Levy Act 1999**

### **[1.7] Section 28 (4), definition of *registered training organisation***

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

## **Part 1.5 Canberra Institute of Technology Act 1987**

### **[1.8] Section 30 (2) (d)**

*substitute*

- (d) 1 must be a person with skills in and knowledge of vocational education and training; and

## **Part 1.6 Construction Occupations (Licensing) Regulation 2004**

### **[1.9] Section 14 (6), definition of *registered training organisation***

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**[1.10] Section 35 (3), definition of *accredited course***

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**Part 1.7 Crimes (Child Sex Offenders) Act  
2005**

**[1.11] Section 124 (1) (s)**

*omit*

*Vocational Education and Training Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**[1.12] Section 124 (2), definition of *education institutions for children*, paragraph (b)**

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

## Part 1.8 Domestic Violence and Protection Orders Act 2001

### [1.13] Dictionary, definition of *employer*, par (d)

*omit*

*Vocational Education and Training Act 1995*

*substitute*

*Training and Tertiary Education Act 2003*

## Part 1.9 Long Service Leave Act 1976

### [1.14] Dictionary, definition of *approved training contract*

*omit*

*Vocational Education and Training Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

## Part 1.10 Payroll Tax Act 1987

### [1.15] Section 9A (8), definition of *approved training contract*

*omit*

*Vocational Education and Training Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

**[1.16] Section 9AB (4), definition of *approved training contract***

*omit*

*Vocational Education and Training Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*

## **Part 1.11 Security Industry Act 2003**

**[1.17] Section 26 (5), definition of *trainee***

*omit*

*Vocational Education and Training Act 1995*

*substitute*

*Training and Tertiary Education Act 2003*

## **Part 1.12 Security Industry Regulation 2003**

**[1.18] Section 15**

*omit*

*Tertiary Accreditation and Registration Act 2003*

*substitute*

*Training and Tertiary Education Act 2003*



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## **Part 1.13**                      **Tertiary Accreditation and Registration Regulation 2004**

### **[1.19] Section 1**

*substitute*

#### **1 Name of regulation**

This regulation is the *Training and Tertiary Education Regulation 2003*.

---

### **Endnotes**

#### **1 Presentation speech**

Presentation speech made in the Legislative Assembly on 8 March 2007.

#### **2 Notification**

Notified under the Legislation Act on 13 June 2007.

#### **3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Training and Tertiary Education Legislation Amendment Bill 2007, which was passed by the Legislative Assembly on 29 May 2007.

Clerk of the Legislative Assembly

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