

**2003**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**VOCATIONAL EDUCATION AND TRAINING ACT 2003**

**EXPLANATORY STATEMENT**

**Circulated by authority of**

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## Outline

The Act is one of two Acts introduced to bring ACT regulatory arrangements on vocational education and training and higher education into line with the requirements of the nationally agreed Australian Quality Framework. The other Act is the ACT Tertiary Accreditation and Registration Act. The two Acts should be considered in conjunction. The two Acts replace the *Vocational Education and Training Act 1995*.

The two relevant ministerial councils, the Australian National Training Authority Ministerial Council (ANTA MINCO), and the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA and the) agreed to make regulatory arrangements to ensure national consistency in the accreditation of courses and the registration of providers in vocational education and training and in higher education. ANTA MINCO agreed to enshrine the requirements of the *Australian Quality Training Framework Standards for Registered Training Organisations* in legislation. Similarly, MCEETYA agreed to enshrine the *National Protocols for Higher Education Approval Processes* in legislation. These two Acts implement the ACT government agreement to implement the decisions of ANTA MINCO and MCEETYA in this matter.

The Tertiary Accreditation and Registration Act subsumes the registration and accreditation aspects of the *Vocational Education and Training Act 1995*. It implements the two ministerial council's decisions to expand and enhance the regulation of both vocational education training and of higher education. It accommodates the *National Protocols for Higher Education Approval Processes* and the *Australian Quality Training Framework Standards for Registered Training Organisations*. In addition the Tertiary Accreditation and Registration Act includes provision for the establishment of the ACT Accreditation and Registration Council (ARC), previously in the *Vocational Education and Training Act 1995*.

The *Vocational Education and Training Act 1995* is repealed and replaced by the *Vocational Education and Training Act 2003*. The new Act is essentially the *Vocational Education and Training Act 1995* with sections covered by the new *Tertiary Accreditation and Registration Act 2003* excised, and brought up to date. The Act now covers the establishment of the ACT Vocational Education and Training Authority and the regulation of employment based training.

## Revenue/Cost implications

The Act has no revenue or cost implications. The new arrangements have been premised on there being no additional costs to the ACT Budget.

## Part 1 - Preliminary

This part provides for the formal matters of the Act including the name of the Act, its commencement, objects, dictionary of terms used in the Act, and reference to offences against the Act and to the notes in the Act.

### Section 1

Names the Act

### Section 2

The commencement in July 2003 will allow time for the re-establishment of the Vocational Education and Training Authority in accordance with the new membership.

### **Section 3**

The broad objectives cover planning, funding, coordination and evaluation of vocational education and training, and its regulation, quality assurance and promotion.

### **Section 4, 5 and 6**

These Sections refer to the dictionary, notes and applies the Criminal Code to offences against this Act.

## **Part 2 - Vocational Education and Training Authority**

Part 2 provides for the establishment, functions, membership and term of office, of the Vocational Education and Training Authority. Part 2 also deals with the proceedings of the Authority and its power to establish committees.

### **Division 2.1**

Division 2.1 deals with the establishment, functions, and membership of the Authority.

### **Section 8**

The functions of Authority are unchanged, except that the provision for the Authority to be the State Training Agency has been removed, on the grounds that this function is not required. This element of the legislation has not been used, with the ACT Department of Education, Youth and Family Services acting in the role of the State Training Agency. The functions of the Authority include an advisory role to the Minister, a planning and management role for the vocational education and training system, a service delivery role to clients, a promotional role to the general community on training matters and a research role.

### **Section 9**

The Minister has the power to direct the authority on the exercise of its functions with the exception of the Authority's reporting function.

### **Section 10**

The Authority is required to consult with relevant organisations in the performance of its functions and to prepare an annual report. Consultation with stakeholders, especially industry training advisory associations and employer and employee interests in the vocational education and training system are fundamental to the Authority's operations to ensure that the Authority is acting in a flexible and responsible manner.

### **Section 11**

The Authority has the power to delegate the exercise of its functions.

### **Section 12**

The Authority is composed of members representing interest groups relevant to vocational education and training. These include employers, employees, providers of training, industry advisory associations, the community in general, and parents of trainees. There are minor changes to the membership of the Authority under the previous Act. The changes are the inclusion of a person representing the interests of indigenous communities and the replacement of a specific reference with a more general reference to a person representing the interests of providers of industry training advisory services.

### **Section 13**

The Minister may terminate the appointment of a member for reason of failure to disclose an interest, on criminal conviction, and for prolonged absence from meetings. The Minister may terminate the membership of any member who no longer represents the constituency from which they were nominated, for physical or mental incapacity, or for bankruptcy.

### **Section 14**

Members who have a direct or indirect financial interest in an issue must declare those interests at a meeting, and the declaration must be recorded in the minutes of the meeting. Such members must not participate in Authority meeting discussion of those issues.

### **Section 15**

Any disclosure of interest must be reported to the Minister within 14 days. By 31 July in each year the chairperson of the Authority must give the Minister a full report on disclosures of interest, and a copy of this statement must be given to the relevant Legislative Assembly Committee.

### **Section 16**

The Territory must reimburse all relevant, reasonable expenses of members carrying out their functions.

### **Section 17**

The Authority and the Chief Executive of the Department administering the Act may negotiate arrangements for the provision of public servants to assist the Authority carry out its functions.

### **Section 18**

The Authority's annual reports must include details of any ministerial direction.

## **Division 2.2**

The issues included in this division were previously in Part 8 of the *Vocational Education and Training Act 1995*. They have been transferred with only minor modification.

### **Sections 19 and 20**

These Sections deal with the proceedings of the Authority, when meetings are called, and the conduct of meetings. The quorum of 6 members is retained, without any restriction on membership classification.

## **Division 2.3**

The issues included in this division were previously in Part 8 of the *Vocational Education and Training Act 1995*.

### **Sections 21 and 22**

The Authority may establish committees to assist in the exercise of its functions. Committees may establish their own procedures for operation, although the Authority may make decide how a committee will operate.

### **Section 23**

The Authority may decide on the composition of any of its committees.

## **Section 24**

Committee members are not entitled to be paid for committee activities, but must be reimbursed by the Territory for any relevant reasonable expenses.

## **Part 3 – Training**

The issues included in this part were previously in Part 6 of the *Vocational Education and Training Act 1995*. It is modified only to achieve consistency with more recent arrangements in other States and Territories and provides for the regulation of work-related training, particularly with reference to apprenticeships and traineeships undertaken through the New Apprenticeship system as it is operating in 2003.

Work related training is the training involving structured on-the-job and off-the-job components leading to a nationally accredited vocational education and training qualification. The training is provided under apprenticeship and traineeship arrangements, which are which are governed by the nationally agreed Training Contract between an employer and employee. Essentially Part 3 is about ensuring the on-the job training component of the training meets minimum quality assurance standards when the on-the- job provider is not a registered training provider under the registration provisions of the Tertiary Accreditation and Registration Act. These provisions generally relate to institutional training providers such as TAFE Colleges, ACT senior secondary colleges registered as RTOs, private training providers such as business colleges and the larger employers.

## **Section 25**

This Section provides for the determination that a sequence of vocational education and training is work-related training. This approach brings up to date the provisions in the *Vocational Education and Training Act 1995* for the Authority to determine which sequences of vocational education and training are approved for the training of trades persons through the traditional apprenticeship system. Under the *Vocational Education and Training Act 1995* these were described as ‘prescribed vocations’.

The effect of such a determination is to require that all work-related training in a trade or any occupation is provided under the apprentice or trainee arrangements through the New Apprenticeships program. This ensures conformity with the national system of training based on nationally endorsed competency standards and which combines both on-the-job and off-the-job training. Work-related training provided under traineeships and apprenticeships lead to Certificates at II, III, IV or Diploma levels. The provisions of Section 25 reflect the Commonwealth's requirements in relation to the payment of training subsidies to employers. To be eligible for Commonwealth subsidies, training must be approved work-related training covered by a national training contract.

## **Section 26**

This Section deals with the conduct of approved training under a national training contract between an employer and the apprentice or trainee (the employee). The Training Contract document must be consistent with the nationally agreed Training Contract. The employer must have adequate facilities, adequate skills, and conduct themselves appropriately for delivery of quality training.

## **Section 27**

The Authority may stipulate how an application for approval may be made, for example, completion of a paper form, or electronic lodgement.

## **Section 28**

The Authority may decide which qualifications may be applied in a training contract.

## **Section 29**

It is an offence for an employer to falsely offer to provide a qualification to an employee where there is no training contract.

## **Section 30**

This Section refers to a national code of practice governing the provision of training under a training contract. This code of practice is available on the Internet.

## **Clauses 31 and 32**

The Authority may amend a Training Contract at the request of either party, but must accede to any reasonable request for amendment from both parties.

# **Part 4 - Disagreements and disputes**

The issues included in this part were previously in Part 7 of the *Vocational Education and Training Act 1995*. This Part provides an informal process of dispute resolution available to:

1. an applicant for approval of a training agreement who disagrees with a decision of the Authority, or
2. disputing parties to an approved training agreement

## **Section 33**

An applicant has 14 days after being notified of a decision to seek a review by a Committee of the Authority, nominated for the specific purpose. The procedures are in addition to any rights of review by the Administrative Appeals Tribunal.

## **Section 34**

Similarly, a dispute about training between parties to a training contract may be notified to the Authority and referred to a committee for review. The Committee has 28 days to attempt to resolve the dispute and report to the Authority on the outcome. If the Committee does not resolve the dispute, the Authority is then expected take action to resolve it, by making a finding of fact about any matter, amending the contract, or by giving directions to the parties to the dispute.

# **Part 5 - Visits by authority**

The issues included in this part were previously in Part 9 of the *Vocational Education and Training Act 1995*. This Part provides for the staff of the Authority to formally visit the premises of registered training providers and employers who are party to a national training contract to investigate the training being undertaken.

## **Section 35**

This Section sets out conditions under which such visits may occur including the provision of notice in writing. The circumstances of such visits would usually be to investigate possible non-compliance, in relation to the provision of training, with requirements included in training contracts

or associated codes of practice. This Section does not refer to general employment issues not directly related to the provision of training.

### **Section 36**

Persons on authorised visits should have an identity card which should be returned to the Authority on demand.

### **Section 37**

A person visiting premises in relation to training contract issues must not remain on the premises when requested to leave without the production of an identity card.

### **Section 38**

If an employer hinders inspection or the observation of training, fails to give information, provides misleading information, the Authority may amend, suspend, or cancel the training contract.

## **Part 6 - Review of decisions**

The issues included in this part were previously in Part 10 of the *Vocational Education and Training Act 1995*. This Part sets out those decisions of the Council and Authority, which may be reviewed by application to the Administrative Appeals Tribunal.

### **Section 39**

This Section refers to all the reviewable decisions, which are detailed in Schedule 1 to the Act

### **Section 40**

The Authority must notify parties to a reviewable decision as detailed in Schedule 1 to the Act, in accordance with the requirements of the Administrative Appeals Tribunal.

### **Section 41**

A person must apply in writing to the Administrative Appeals Tribunal for an appeal.

### **Section 42**

This section extends the time frame for appeals to the Administrative Appeals Tribunal to ensure that the appeal process to the Vocational Education and Training Authority has run its course.

## **Part 7 - Miscellaneous**

### **Section 43**

The issues included in this Section were previously in Section 10 of the *Vocational Education and Training Act 1995*. The Section recognises the role that the Australian National Training Authority may take in the ACT.

### **Sections 44 and 45**

The issues included in this Section were previously in Sections 23 and 61 of the *Vocational Education and Training Act 1995*. This Section provides penalties for false and misleading statements in relation to the provision of training under national training contracts.

### **Section 46**

This Section protects persons implementing the Act from civil liability for acts done honestly and without negligence.

### **Section 47**

The Minister may make determinations of fees for this Act. These determinations are disallowable instruments.

### **Section 48**

This Section enables the Authority to approve forms for this Act. These forms are notifiable instruments.

### **Section 49**

This Section endows regulation-making authority on the Executive consistent with the Act.

## **Part 8 – Transitional provisions**

This part ensures that decisions made about the approval, suspension or amendment of a national training contract before the commencement of the Act will hold until 30 June 2004.

## **Part – 9 Repeals and consequential amendments**

This part repeals the *Vocational Education and Training Act 1995* and the *Vocational Education and Training Regulations 1998*. There are minor amendments to terminology such as changes from “training agreement” to “training contract” in other legislation such as the Annual Leave Act 1973, The Building and Construction Training Levy Act 1999, the Electricity Safety Act and Regulations 1971, the Long Service Leave Act 1976, the Payroll Tax Act 1987, Workers Compensation Regulations 2002.

## **Schedule 1 Reviewable decision**

This schedule lists reviewable decisions referred to in the ACT.

## **Dictionary**

The Dictionary defines relevant terminology.