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The Legislative Assembly for the Australian Capital Territory

Tertiary Accreditation and Registration Bill 2003

Explanatory Statement

Circulated by the authority of

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CONTENTS

EXPLANATORY STATEMENT	3
Chapter 1 Preliminary	4
Chapter 2 Accreditation and registration council	4
Part 2.1 Establishment, functions and membership of council	4
Part 2.2 Proceedings of council.....	6
Part 2.3 Council committees	6
Part 2.4 Compliance audits.....	7
Chapter 3 Vocational education and training	7
Part 3.1 Preliminary	7
Part 3.2 National register.....	8
Part 3.3 Registered training organisations.....	8
Part 3.4 National scheme—compliance and information.....	12
Part 3.5 Accredited courses—vocational education.....	13
Part 3.6 Disagreements under chapter 3.....	14
Chapter 4 Higher education— non-universities	15
Part 4.1 Preliminary	15
Part 4.2 ACT register	15
Part 4.3 Registered higher education providers	15
Part 4.4 Accredited courses—higher education	19
Part 4.5 Disagreements under chapter 4.....	20
Chapter 5 Higher education—universities	20
Part 5.1 Operation of universities in the ACT.....	20
Part 5.2 University advisory panels.....	21
Part 5.3 Establishment or recognition of universities in the ACT.....	21
Part 5.4 Foreign universities in the ACT.....	23
Chapter 6 General.....	24
Part 6.1 Visits to premises.....	24
Part 6.2 Review of decisions	25
Part 6.3 Other provisions.....	25
Chapter 7 Transitional.....	27

TERTIARY ACCREDITATION AND REGISTRATION BILL 2003

EXPLANATORY STATEMENT

Outline

The purpose of the legislation is to consolidate all accreditation and registration regulation in the one Act under the ACT Accreditation and Registration Council.

Background

The Bill is one of two Bills 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 Bill is the ACT Vocational Education and Training Bill. The two Bills should be considered in conjunction. The two bills replace the *Vocational Education and Training Act 1995*. A consequential provision in the Vocational Education and Training Bill 2003 repeals the 1995 legislation.

The two relevant ministerial councils 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. The Australian National Training Authority Ministerial Council (ANTA MINCO) agreed to enshrine the requirements of the *Australian Quality Training Framework Standards for Registered Training Organisations* in legislation. Similarly, the Ministerial Council on Employment, Education, Training and Youth Affairs (MCEETYA) agreed to enshrine the *National Protocols for Higher Education Approval Processes* in legislation. These two Bills implement the ACT government agreement to implement the decisions of ANTA MINCO and MCEETYA in this matter.

The Tertiary Accreditation and Registration Bill subsumes the registration and accreditation aspects of the *Vocational Education and Training Act 1995*. It implements the ministerial council decisions made by each Council to expand and enhance the regulation of 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 Bill includes provision for the establishment of the ACT Accreditation and Registration Council (ARC), currently in the *Vocational Education and Training Act 1995*.

Details

Detailed explanation of each section of the Bill follows.

Chapter 1 Preliminary

1. Name of Act

Names the Act.

2. Commencement

States the date on which the legislation takes effect.

3. Purpose

The purpose states the 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

Refers to the dictionary at the end of the Act containing defined terms used in the Act.

5. Notes

States that the notes provided in the legislation are not part of the law and are intended to assist readers with additional information or explanation.

6. Offences against Act—application of Criminal Code etc

States that other legislation applies to offences in this Act, which are explained in a note to be the Criminal Code and the legislation Act with regard to penalty units.

Chapter 2 Accreditation and registration council

Part 2.1 Establishment, functions and membership of council

7. Establishment of council

Establishes the Accreditation and Registration Council.

8. Functions of council

- (1) The functions of the council are to advise the Minister on any aspect of tertiary education and training, on the request of the Minister, and to inquire into and advise on any aspect of vocational education and training or higher education.
- (2) The council may exercise any other function given to it under this Act or another Territory law allowing flexibility for adaptation by the council to future circumstances and needs.

9. Ministerial directions to council

The Minister may give the council a direction in relation to the exercise of its functions. Such a direction is a notifiable instrument and must be complied with. However, the Minister cannot give any direction about how to provide advice to the Minister or on the Annual Report.

10. Delegation by council

This section allows the council to delegate the exercise of its functions to a council member, a committee of the council or a council staff member or a person prescribed under regulations in accordance with the provisions of the Legislation Act.

11. Council to have regard to authority's views

In exercising its functions, the council must have regard to the views of the Vocational Education and Training Authority about vocational education and training matters.

12. Membership of council

Defines the membership of the council and is consistent with the provisions in the Legislation Act.

13. Ending appointment of council member

- (1) This sub-section gives the Minister powers to end an appointment to the council for misbehaviour by the member or because the members has contravened Section 14(Disclosure of interest by members of council).
- (2) The Minister may end the appointment of a council member if the Minister is satisfied that the member is no longer an appropriate person to represent the relevant interests.

14. Disclosure of interests by council members

The purpose of this section is to enable the council to advise and inform the Minister about tertiary education and training even in the event of a member declaring a personal financial interest.. It requires members to disclose the nature of any direct or indirect financial interest in an issue being discussed by council. The Member should not be present during discussions or when decisions are made, unless council decides otherwise.

15. Reporting of disclosed interests to Minister

- (1&2) This sub-section provides for the council chairperson to report the disclosure of a financial interest to the Minister and stipulates the information be supplied, in what form and under certain timelines.
- (3 & 4) These sub-sections require the Minister to 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.
- (5) This sub-section also defines *relevant committee* to mean the standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or if no nomination is in effect then the standing committee of the Legislative Assembly responsible for public accounts is the relevant committee.

16. Reimbursement of council members

Council members will be reimbursed for out of pocket expenses incurred while on council business.

17. Council staff

This section provides for the council to make arrangements with the Chief Executive Officer to use the services of members of the relevant Departmental staff.

18. Annual report by council

The council must provide an annual report as per the *Annual Reports (Government Agencies) Act 1995* and include details of Ministerial directions to council, including the effect of Ministerial directions to council.

Part 2.2 Proceedings of council

19. Calling council meetings

This section allows the council chairperson to decide on the time and place of the meetings and stipulates that members be given adequate notice of council meetings.

20. Council procedures

- (1 & 2) Specify the role of the chairperson and the procedure for replacing the chair if absent from a meeting
- (3,4 & 5) Require a quorum of at least 5 council members for council business to proceed, that a majority vote will decide the issues and that the Chairperson has the deciding vote when equal number of votes are recorded. *The quorum must include one member who represents employees, and one member who represents employers.*
- (6) Allows the council to decide its own procedure in relation to anything for which a procedure is not provided under this Act.
- (7) Requires the council to keep minutes of its meetings.

Part 2.3 Council committees

21. Establishment of committees

This section provides for the council to establish committees to help the council in the exercise of its functions.

22. Exercise of committee functions

- (1) This sub-section provides for council to stipulate how a committee is to exercise its functions of providing advice and help to the council; and includes the power to decide when committee meetings are held, who can attend, arrangements for chairing the meeting and the necessity of minutes.
- (2) Subject to any decision of the council under subsection (1), a committee may decide its own procedures.

23. Membership of committees

This section states that council committees consist of the people appointed by the council and may also consist completely or partly of council members.

24. Reimbursement of committee members

This section allows for the payment of a reimbursement to a committee member for expenses reasonably incurred in the exercise of the member's functions. Committee members are not entitled to be paid.

Part 2.4 Compliance audits

25. Audit of training organisations and higher education providers

This section allows the council to conduct a compliance audit, either within in the ACT or another State or Territory, of the organisation itself and the operations of training organisations and higher education providers registered by the council, or that have applied to the council for registration.

26. Audit of Registered Training Organisations registered by another registering body

- (1) This sub-section provides for the council to audit an RTO operating within the ACT but registered by another registering body and requires the council to have reasonable grounds on which to base an audit.
- (2) This sub-section also requires council to notify the other registering body of the suspected contravention and to allow sufficient time for the other registering body to deal with the matter. If the other registering body fails to take action or the action is deemed inadequate, the council can take any step or further step to deal with the suspected contravention.

27. Conduct of audit

- (1) This sub-section requires the council to use agreed audit procedures and audits against the relevant RTO standards and higher education standards. This section provides that the audit must comply with the audit standards stated in the *Standards for State and Territory Registering/Course Accrediting Bodies*.
- (2) However, a failure to fully comply with the *Standards for State and Territory Registering/Course Accrediting Bodies* will not invalidate any decision made as a result of that audit if:

The results of the audit would not have been substantially effected by compliance with the *Standards for State and Territory Registering/Course Accrediting Bodies*; or

The failure to comply with the *Standards for State and Territory Registering/Course Accrediting Bodies* was a result of inconsistency between the Standards and the legislation of the other jurisdiction.

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 chapter 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

A person is defined in the Legislation Act to include a person and in this context means a Registered Training Organisation. A matter means for this purpose the details of registration as agreed for inclusion on the national register. Therefor an RTO is deemed to be registered if details of the person or matter are recorded on the national register. Currently a national register, established by Australian National Training Authority, called the National Training Information Service, supports the national vocational education and training system and gives clear and visible proof of registration status. Any subsequent replacement register will continue to have this role.

Part 3.3 Registered training organisations (RTO)

31. Scope of registration of RTO

This section defines an RTO's *scope of registration* to consist 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

This section allows a person to apply to the council for registration as a training organisation using the prescribed forms. It requires that the applicant gives the council any information required by it to decide the application.

33. Decision about registration as RTO

- (1) This sub-section requires that, 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 and conduct a compliance audit.
- (3) Registration is precluded if the applicant is registered as a training organisation by another registering body; the applicant's main place of business is not in the ACT; an audit has found the applicant does not comply with the standards.
- (4) Subsection (3) does not apply to an application, if the RTO has received notice from the registration body in the other state or territory that their application to transfer RTO registration to the ACT is being processed. Council must be satisfied that there are no outstanding audit compliance failures for the RTO, and 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) This sub-section allows the council to impose reasonable conditions on the registration of the applicant as a training organisation.
- (7) This sub-section provides for council to imposed conditions on the registration.
- (8) This sub-section requires the council, once it has made the decision to register the applicant, to record details of the registration and the scope of registration.
- (9) This sub-section requires the council to record the registration information in a timely manner. If the application is made in conjunction with an application for the cancellation of a training organisation's registration under a corresponding law, council is to record

the information immediately after the cancellation under the corresponding law is registered by the other registering body- this will avoid any period when registration is lapsed.

34. Decision about registration – registration as RTO previously cancelled

- (1) This sub-section provides for council to refuse a registration application from someone or an associate of the RTO, whose registration was cancelled within the last twelve months .
- (2) This sub-section explains who is an associate.

35. Registration conditions—RTO

- (1) This sub-section should be read in conjunction with other sections eg decision about registration as RTO, amending, suspending or cancelling registration, and registration by another registering body under a corresponding law.
- (2) This sub-section provides for council to impose conditions of registration, including requirements stated to apply to an RTO under the RTO standards and requires the RTO to provide information to council about changes to RTO operations at all levels, including registration conditions. This sub-section also requires the RTO to submit to audit, either by the council or another registering body, and to take any steps necessary to comply if any non-compliances are revealed. The RTO must also supply information requested by council or by another registering body
- (3) Sub-section (3) provides for conditions imposed by council to apply to the operations of the RTO in every jurisdiction, unless otherwise stated by council. (4) The RTO must not contravene a provision of this Act or a corresponding law
- (5) A condition to which an RTO registered by another registering body is subjected under a corresponding law has effect for the Territory.

36. Period of registration—RTO

The registration of an RTO may be for a period up to 5 years. At the end of the initial registration period, the registration may be renewed if application for renewal is made at least 6 months before the day the registration ends. Re-registration is conducted under the same provisions outlined for initial registration.

37. Amending registration on application by RTO

- (1,2 & 3) On application by an RTO on the approved form the council must amend the RTO's registered details, or refuse to do so.

These sub-sections provide for the council to obtain any information reasonably required by it to decide the application to amend the RTO's scope or conditions of registration.

- (4) On application by an RTO for the cancellation of registration, the council must cancel the registration of the RTO.

38. Amending, suspending or cancelling RTO registration without application

- (1) This sub-section ensures that of all registering bodies the registering body that registers an RTO has primary responsibility to take action against the RTO for non-compliances.
- (2) Council can amend the scope or conditions of registration of an RTO registered by the council, suspend registration or cancel registration. This sub-section also gives council

the ability to amend the scope or conditions of registration of an RTO that was registered by another registering body for its ACT operations.

- (3) This sub-section provides for council to suspend or cancel registration if registration was obtained by false or misleading information or if the RTO contravenes a condition of registration.
- (4) This sub-section requires council to allow sufficient time for the other registering body to deal with the non-compliance.
- (5) This sub-section provides council with the right to take action against an RTO of any jurisdiction in specific circumstances revealed by an audit.
- (6) This sub-section provides for the council, before the end of a consultation phase with the other jurisdiction, taking all steps necessary to impose a restriction immediately after, or at any time after, the consultation period has ended.
- (7 & 8) These subsections confine the restrictions imposed by council for a particular non-compliance in only one place or jurisdiction to that particular place or jurisdiction.
- (9 & 10) These sub-sections provide for consistent application of the restrictions, consultation with other jurisdictions. If communication with other jurisdictions is incomplete this subsection provides protection of council decisions..

39. Cancelling RTO registration on change of location of operations

- (1) This sub-section applies where a training organisation no longer has its principal place of business or no longer conducts all/most of its operations in the ACT. In these circumstances, the council may cancel the training organisation's registration either on an application from the RTO or on its own initiative.
- (2) Where the council decides to cancel registration under sub-section (1) it must give notice to the training organisation.
- (3) After the council has given notice to the training organisation and before the registration is cancelled, the training organisation may apply for registration in another jurisdiction. Where the training organisation has applied for registration in another jurisdiction the registration must not be cancelled until the registering body in the new jurisdiction had decided to grant or not grant the registration. The council may cancel the RTO registration if the council is satisfied that the RTO is not acting honestly in relation to applying for registration in another jurisdiction.

40. Effect of suspending RTO registration

These sub-sections creates an offence for a training organisation, that is the subject of a suspension to:

- (a) recruit or enrol anyone;
- (b) solicit or accept any payment from anyone for their recruitment or enrolment;
- (c) start anyone's training or assessment;
- (d) issue any qualification or statement of attainment in relation to the training or assessment, unless the training or assessment was completed before the prohibition.

50 penalty units is the penalty for providing these services while a suspension is in place and the offence is a strict liability offence.

41. Suspension of registration – training and assessment previously agreed

This section applies if the training organisation had entered into an agreement to provide training or assessment to anyone before the suspension was imposed. The council may allow the RTO to continue to provide the training or assessment or accept payment for the provision of the training or assessment for a period no longer than 12 months.

There may be, in the council's opinion, exceptional circumstances justifying the refusal of the application to continue training and assessment under the provisions stated above, in which case the council can refuse the application.

All suspensions and prohibitions are taken to start from the day after the direction is given by council.

42. Cancellation of registration—training or assessment previously agreed

This section applies if the training organisation had entered into an agreement to provide training or assessment to anyone before the cancellation was imposed. The council may allow the RTO to continue to provide the training or assessment or issue qualifications or statements of attainment in relation to the training or assessment for a period no longer than 12 months.

There may be, in the council's opinion, exceptional circumstances justifying the refusal of the application to continue training and assessment under the provisions stated above, in which case the council can refuse the application.

All suspensions and prohibitions are taken to start from the day after council gives the direction.

43. Registration of amendment, end of registration etc.

This section requires council to enter on the national register any amendment of the scope or details of registration, other than an amendment of the conditions of registration. Council must remove the registered details of the RTO at the end of registration.

44. Offence to falsely claim to be RTO etc

The section should be read in conjunction with Section 31 that explains the term scope of registration. An RTO registration is for specific approved areas of training activity and it is an offence to claim to deliver in areas not under approved Scope.

This section creates the following offences:

- a person must not claim to be a registered training organisation if they are not;
- a person or person acting for an registered training organisation with a defined scope of registration must not issue or claim to be able to issue qualifications or statements of attainment that are outside the registered training organisation's scope of registration;
- a person or person acting for a registered training organisation with a defined scope of registration must not claim to be able to provide training or assessments resulting in a qualification or statement of attainment that is outside the registered training organisation's scope of registration; and
- a person must not claim to be able to provide training that will result in a qualification or statement of attainment that will be issued by another person or organisation (for example, a registered training organisation) if they know the organisation cannot issue the qualification or statement of attainment.
- The penalty for each offence is 50 penalty units

Part 3.4 National scheme—compliance and information

45. Function may be used to support national scheme

The section applies to a person who exercises a power or performs a function in relation to a registered training organisation or in relation to the registration of a training organisation.

The person may exercise the power or perform the function in relation to a training organisation registered by a registering body in another jurisdiction but operating in this jurisdiction. However, the power can only be exercised or function performed at the request of the registering body of the other jurisdiction (ie. the body that registered the training organisation) to:

- the extent of inquiring if the registered training organisation is complying with the *Standards for Registered Training Organisations*, as compliance with these Standards is a condition of registration; or
- conduct an audit of the training organisation either to assist in determining an application for registration or as condition of a training organisation on-going registration.

46. Information may be made available to other registering bodies

This section allows a registering body to share with the registering bodies in other jurisdictions information about:

- applications for registration;
- a training organisation's registration;
- an audit performed on a training organisation;
- an action taken by the registering body in relation to a registered training organisation (including imposing a sanction); and
- the performance of a function or exercise of power by a person at the request of another registering body.

The section provides for a person to disclose information under this section or under the corresponding law of another jurisdiction without contravening obligations not to disclose the information under other laws or rule of law.

Part 3.5 Accredited courses—vocational education

47. Applying for accreditation—vocational course

This section provides that a person may apply to the council for accreditation of a course. The application must be on the appropriate form. The applicant must also provide the course accrediting body with any information it needs when considering the application.

48. Decision about Accreditation- vocational course

This section provides that the council must approve an application for accreditation of a course or refuse to approve it. In deciding the application, the council must apply the standards for accreditation of courses contained in the *Standards for State and Territory Registering/Course Accrediting Bodies*.

Where the course accrediting body decides to grant the application it must immediately register the accredited course on the national register. If the course accrediting body decides not to grant the application.

49. Expert committee for pt 3.5

This section requires the council to establish a committee under part 2.3 (council committees) to help the council in deciding an application to accredit a course under this part. The council will appoint committee members with a range of skills and expertise to assess the educational and management capacity of the proposed provider of the course, the suitability of the course and of the proposed methods of delivery of the course.

50. Period of accreditation- vocational course

The section establishes the term of accreditation to be up to 5 years. A person who has been granted accreditation of a course may apply for renewal of the accreditation at least 6 months before the accreditation term expires. Re-accreditation is conducted under the same provisions outlined for initial accreditation.

51. Cancelling accreditation-vocational course

Where council has accredited a course, it may cancel the accreditation if the course no longer meets the standards for accreditation of courses; the provider does not have the educational or management capacity to provide the course; the method of delivery is not suitable for the course.

52. Cancellation of accreditation—vocational course previously agreed

- (1) This sub-section applies if a person had entered into an agreement to provide a course to anyone before the cancellation was imposed.
- (2) The council may allow the person to continue to provide the course for a period no longer than 12 months. The council may consider that there are circumstances justifying the refusal of the application to continue the course for previously enrolled students, in which case the council can refuse the application to continue the course.
- (3). The accreditation can continue during the prohibition to allow delivery of the course and the issue of qualifications and statements of attainment in relation to the course.
- (4) The arrangements outlined under sub-section (3) can be cancelled if, in the council's opinion, exceptional circumstances occur.
- (5) The accreditation is taken to be cancelled from the day after the council 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

The section creates an offence that a person must not claim to provide an accredited course or do anything likely to induce a person to believe a course being provided is accredited unless the course is accredited. The penalty for the offence is 50 penalty units.

Part 3.6 Disagreements under chapter 3

55. Disagreement with decision of council under s 32 or s 46

This section applies if an applicant disagrees with a decision of the council in relation to an application for registration as a training organisation or accreditation of a vocational course. The decisions that can be appealed are listed in Schedule 1 at the end of the legislation.

The section sets out the process and timelines for the applicant and the council to resolve the disagreement. The council must refer the dispute to a grievance committee that reports back to council.

If the committee cannot resolve the disagreement, the original decision stands. The applicant has resource to the Administrative Appeals Tribunal under the conditions listed in section 107.

Chapter 4 Higher education— non-universities

Part 4.1 Preliminary

56. Application of chapter 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

This Part requires the council to establish and maintain a register to be known as the *ACT Register of Higher Education Providers*. Registration is confirmed when the person or matter is recorded on the register.

Part 4.3 Registered higher education providers

58. Scope of registration of higher education provider

This section provides for council to define the courses the person is registered to provide and the higher education awards for which the person is registered to provide courses.

59. Application for registration as higher education provider

This section allows a person to apply to the council for registration as a higher education provider using the prescribed forms. It requires that the applicant give the council any information required by it to decide the application.

60. Decision about registration as higher education provider

- (1 & 2) These sub-sections provide for the council to register local, interstate and overseas higher education providers. In deciding the application, the council must apply the higher education standards.
- (3) This sub-section requires the council to use a range of procedures and processes appropriate to the circumstances of the application and including:
- (a) compliance audit to provide evidence that the provider complies with the higher education standards;
 - (b) checking that the sponsoring accrediting authority of another State or Territory is recognised by the council; and
 - (c) checking that the authority in an overseas country that recognised the applicant is, in the Minister's opinion, the competent authority for the purpose.

- (4) This sub-section provides for council to consult with relevant people or professional or industry bodies and any committee established by the council to provides advice on the registration
- (5 & 6) These sub-sections provide for council to impose conditions on the registration of the applicant as a higher education provider, which are consistent with all national arrangements.
- (7) If the application is successful the council must place the applicant on the register giving details of the applicant's scope of registration.

61. Decision about registration – registration of higher education provider previously cancelled

- (1) This sub-section provides for council to refuse a registration application from someone whose registration was cancelled within the last twelve months. This section includes associates of the previously registered RTO in the prohibition from seeking registration within twelve months of a cancellation.
- (2) This sub-section defines associate

62. Expert committee for pt 4.3

This section requires the council to establish a committee under part 2.3 (council committees) to help the council in deciding an application to register a higher education provider under this part. The council will appoint committee members with a range of skills and expertise to assess the educational and management capacity of the proposed provider, the suitability of the course and of the proposed methods of delivery of the course.

63. Registration conditions—higher education provider

- (1) This sub-section should be read in conjunction with other sections eg decision about registration as a higher education provider, amending, suspending or cancelling registration, and when conditions are imposed.
- (2) This sub-section provides for council to impose conditions of registration, including requirements stated to apply to a higher education provider under the higher education standards. It also requires the higher education provider to provide information about changes to operations at all levels, including registration conditions.

The higher education provider is required to submit to audit by council to provide information to council about registration. If a compliance audit shows that the provider does not comply with the higher education standards this section requires that the higher education provider must take all necessary steps to comply.

- (3) A registered Higher education provider must not contravene a provision of this Act.

64. Period of registration—higher education provider

Registration 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. Renewal or Re-registration is conducted under the same provisions outlined for initial registration.

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

- (1,2, & 3) On application by a higher education provider on the approved form the council must amend the higher education provider's registered details, or refuse to do so.

These sub-sections provide for the council to obtain any information reasonably required by it to decide the application to amend the higher education provider's scope or conditions of registration. The council may decide on the necessity for a compliance audit as it applies 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) This sub-section provides for council to amend the scope or conditions of registration, suspend the registration or cancel the registration.
- (2 & 3) These sub-sections outline the grounds for the council decisions in (1) and include false and misleading information or breach of conditions set by council. Decisions must be consistent with the higher education standards.

67. Effect of suspending registration of higher education provider

- (1) The sub-section provides for council to suspend the registration or part of the scope of registration of the higher education provider by applying a prohibition on the activities of the provider.

(2) The sub-section creates an offence for a higher education provider, that is the subject of a suspension, to:

- recruit or enrol anyone;
- solicit or accept any payment from anyone for their recruitment or enrolment;
- start anyone's training or assessment; or
- issue any qualification or statement of attainment in relation to the training or assessment, unless the training or assessment was completed before the prohibition.

The penalty for providing these services while a suspension is in place is 50 penalty units.

68. Suspension of registration—higher education course previously agreed

(1,2 & 3) These sub-sections apply if the higher education provider had entered into an agreement to provide a course to anyone before the suspension was imposed. The council, after considerations about the welfare of the students and the integrity of the qualification, may allow the course to continue for a maximum of two years.

(4 & 5) These sub-sections allow the higher education provider to continue, for existing students only, to provide the course and grant a higher education award even with a prohibition in place.

(6) The council may consider, in exceptional circumstances justifying the refusal of the application to continue the course under the provisions stated above, in which case the council can direct that provider stops conducting the operations. .

(7) All suspensions and prohibitions are taken to start from the day after the direction is given by council.

69. Cancellation of registration—higher education course previously agreed

This section provides for council to cancel the registration of a provider and makes provision for existing students. A similar process as outlined in section 68 applies to the cancellation of the registration of a higher education course previously agreed.

70. Registration of amendment, suspension, cancellation etc.

This section requires council to enter on the ACT Register of Higher Education Providers any amendment of the scope or details of registration, other than an amendment of the conditions of registration and remove the registered details of the higher education provider at the end of registration.

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

(1 & 2) These sub-sections create an offence if a person, other than a university, claims to be a higher education provider if they are not, or operates as a higher education provider in the ACT and they are not registered.

(3) A person or person acting for a higher education provider with a defined scope must not issue or claim to be able to issue a higher education qualifications that is outside the providers' scope of registration.

- (4 & 5) These sub-sections define what activities are deemed as operating as a higher education provider and include offering and claiming to provide a higher education course or inducing a person to believe the provider operate as a higher education provider.
- (6&7) These sub-sections include agents and franchises under the legislation and detail the modes of delivery to be deemed as operating in the ACT.

Part 4.4 Accredited courses—higher education

72. Applying for accreditation – higher education

The section provides that a person must apply to the council for accreditation of a course. The application must be on the appropriate form and accompanied by the required fee. The applicant must also provide the council with any information it needs when considering the application.

73. Decision about Accreditation- higher education course

This section provides that the council must approve an application for accreditation of a course or refuse to approve it. In deciding the application, the council must apply the higher education standards that incorporate the National Protocols for Higher Education.

Where the course accrediting body decides to grant the application it must immediately register the accredited course on the national register.

74. Expert committee for pt 4.45

This section requires the council to establish a committee under part 2.3 (council committees) to help the council in deciding an application to accredit a course under this part. The council will appoint committee members with a range of skills and expertise to assess the educational and management capacity of the proposed provider of the course, the suitability of the course and of the proposed methods of delivery of the course.

75. Period of accreditation- vocational course

This section establishes the term of accreditation to be up to 5 years. A person who has been granted accreditation of a course may apply for renewal of the accreditation at least 6 months before the accreditation term expires. Renewal of accreditation follows the same provisions as initial accreditation.

76. Cancelling accreditation - higher education course

Where council has accredited a course, it must cancel the accreditation on application by the provider and on the grounds and in the circumstance prescribed under the regulations.

77. Cancellation of accreditation—higher education course previously agreed

This section applies if a higher education provider had entered into an agreement to provide a course to anyone before the cancellation was imposed. The council may allow the person to continue to provide the course for a period no longer than 2 years. In making the decision the council will have regard to the welfare of students and the integrity of the course.

Sub-section (4) allows the higher education provider to provide the course and issue a higher education award in relation to the course.

Sub-sections (5&6) provide for the council to refuse the application to continue the course for previously enrolled students or to direct the person to immediately stop conducting the operations agreed under sub-section (4). The cancellation takes effect on the day after the council direction is given.

78. 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.

79. Offence to falsely claim higher education course accredited

The section creates an offence that a person must not claim to provide an accredited higher education course or do anything likely to induce a person to believe a course being provided is accredited unless the course is accredited.

Part 4.5 Disagreements under chapter 4

80. Disagreement with decision of council under s 58 or s 70

This section applies if an applicant disagrees with a decision of the council in relation to an application for registration as a higher education provider or accreditation of a higher education course. The decisions that can be appealed are listed in Schedule 1 at the end of the legislation.

The section sets out the process and timelines for the applicant and the council to resolve the disagreement. The council must refer the dispute to a grievance committee that reports back to council.

If the committee cannot resolve the disagreement, the original decision stands. The applicant has access to further review by the Administrative Appeals Tribunal as outlined in section 107.

Chapter 5 Higher education—universities

Part 5.1 Operation of universities in the ACT

81. Universities to be established recognised or approved

This section establishes the persons entitled to use the Term University. An offence is committed in claiming to be a university unless the person is established recognised or approved under this Act, established under another law of the territory, (for example the University of Canberra), or established under the law of the Commonwealth or state unless declared ineligible to operate as a university in the ACT under section 82.

82. Declaration that university may not operate in ACT

This section provides for the Minister to be able to declare that a university, even if established under the law of another jurisdiction, must not operate, or purport to operate in the ACT as a university, or part of a university if, in the Minister's opinion, standards are not met in relation to operations in the ACT.

83. What is meant by operating as a university?

- (1 & 2) These sub-sections create an offence if a person claims to be a University or part of a university if they are not, or operates as a university in the ACT and they are not entitled to do so.
- (3) This sub-section makes explicit that agents and franchise arrangements are also covered by the definition of operating as a university in the ACT.
- (4) This sub-sections defines what activities are deemed as operating as a university and include offering and claiming to provide a higher education course as a university or inducing a person to believe the provider operates as a university. This section lists in detail the modes of delivery considered by council to be deemed as operating as a university in the ACT and include the internet, cable television, telephone or other electronic devise

84. Who can use title of ‘university’?

This section makes explicit that the term university is a protected term and no combination of terms with the word university can be used in an educational context if the person is not a university. The penalty is 100 penalty units and the offence is a strict liability offence.

There is an exemption for the University of the Third Age to use the title.

Part 5.2 University advisory panels

85. Establishment of panel

This section outlines the process for the Minister to follow when an application for university status is received. An expert panel with substantial knowledge and experience of academic affairs and university management will be established, in consultation with the council.

86. Panel guidelines

This section provides for the Minister and council to make guidelines for establishment, recognition or approval of a university. The university advisory panel will consider these guidelines when examining proposals for the establishment or recognition of universities in the ACT and applications for approval by foreign universities.

Part 5.3 Establishment or recognition of universities in the ACT

Decision to establish or recognise university

87. Proposal for ACT university

This section provides for the Minister to accept a proposal from a corporation for establishment or recognition as an ACT university. This section requires the applicant to provide the Minister with all information required by the Minister to consider the proposal.

88. Declaration of ACT university

- (1) This sub-section provides for the Minister to declare that the proposed university is established or recognised as a university, or refuse to do so.

- (2&3) The Minister may impose conditions on the proposed university and recognition is for a maximum period of five years requiring notification to the legislative assembly as a disallowable instrument.
- (4&5) The Minister must take into consideration the university advisory panel's report, and be satisfied the proposed university has the characteristics, and fulfils the role, of a university, as outlined in the Higher Education standards. 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:

- it meets the criteria for a university stated in the national protocols;
- has appropriate accounting, financial and staffing resources in the ACT; and
- meets any relevant guidelines and satisfies any other reasonable requirements of the Minister.

Role of university advisory panel

90. Panel to consider proposal

This section provides guidance to a university advisory panel as to its roles and responsibilities, including the documentation it must consider, and consult with relevant academic, professional or industry bodies.

91. Panel to report to Minister

This section outlines the process for the university advisory panel to report to the Minister. The university advisory panel must give a written report to the Minister and include 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 any conditions on establishment or recognition recommended by the panel.

Division 5.3.3 Conditions of establishment or recognition

92. Conditions of establishment or recognition of ACT university

This section provides for the Minister to impose conditions on the recognition or establishment of any university seeking to operate in the ACT.

This section also mandates the following conditions on the proposed university: complying with the national protocols, giving notice of any substantial change to any level of the universities activities, complying with any part of this Act, supplying any information required by the Minister and not contravening any condition of its registration.

93. Review of operations of university

This section provides for the Minister to review the operation of a university established or recognised under this part. A panel must be convened to advise the Minister and the outcome of the review can be to amend the declaration, suspend the declaration or repeal of the declaration.

Part 5.4 Foreign universities in the ACT

94. Application for approval as foreign university

This section provides for a foreign university to apply to the Minister for approval to operate in the ACT as a university. The Minister will require information about its recognition by the relevant accreditation body in the country where it is established; and any other information required to decide the application.

95.

Decision about approval as foreign university

This section provides for the Minister to approve or refuse to approve a foreign university to operate in the ACT. The approval may be subject to conditions and must be referred to the Legislative Assembly as a disallowable instrument.

In making a decision, the Minister must refer the application to a university advisory panel (see Part 5.2) and other experts as appropriate. The Minister must be satisfied of the legal status of the university and its standing in the country where it is established (including recognition by the relevant accreditation body as determined by the council). The adequacy of the proposed arrangements for the university's operation in the ACT is an essential criterion.

96. Period of approval—foreign university

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

97. Conditions of foreign university approval

- (1) This sub-section provides for the Minister to impose conditions on the recognition or establishment of any university seeking to operate in the ACT.
- (2&3) These sub-sections mandate the following conditions on the proposed university: complying with the national protocols, giving notice of any substantial change to any level of the universities activities, not contravening any part of this Act, supplying any information required by the Minister and not contravening any condition of its registration.

98. Review of operations of foreign university

This section provides for the Minister to review the operation of a foreign university established or recognised under this part. A panel must be convened to advise the Minister and the outcome of the review can be imposition of further conditions, suspension of the approval or repeal of the approval.

Chapter 6 General

Part 6.1 Visits to premises

99. Visits by council—RTO premises

This section provides for council members, staff of the council and expert committee members to formally visit the premises of the RTO registered by the council. It sets out conditions under which such visits may occur including the provision of notice in writing. It provides for the requirement for the RTO to produce any document in the possession of the RTO containing information relating to training given, or proposed to be given, on the premises. In circumstances, judged by the council to be exceptional, the notification mentioned in this section can be waived.

100. Visits by council—higher education provider premises

This section provides for council members, staff of the council and expert committee members to formally visit the premises of higher education providers registered by the council. It sets out conditions under which such visits may occur including the provision of notice in writing. It provides for the requirement for the higher education provider to produce any document in the possession of the provider containing information relating to courses given, or proposed to be

given, on the premises. In circumstances, judged by the council to be exceptional, the notification mentioned in this section can be waived.

101. Identity cards

This section outlines the type identity cards required.

102. Production of identity card

This section requires at least one of the persons visiting the premises to have an official identity card as outlines in section 99. It is not a requirement that all those visiting the premises have an official identity card, because experts may participate in only one panel.

103. Obstructing visits

This section provides for council to cancel the registration of an RTO or registered higher education provider if the RTO or provider obstructs or hinders a person entering premises or observing a course under this part. Refusing to give information, or giving information that the RTO or Higher Education Provider knows is false or misleading, in response to a request under this section also constitutes an obstruction.

Part 6.2 Review of decisions

104. Definition for pt 6

In this part a renewable decision is defined as one outlines in Schedule 1.

105. Notice of reviewable decisions

This section requires council to give written notice of the renewable decision in accordance with the code of practice associated with the *Administrative Appeals Tribunal Act 1989*.

106. Review by AAT of reviewable decisions

Any disagreement with a council decision, defined as reviewable decision in the Schedule, may be taken to the Administrative Appeals Tribunal.

107. Modification of Administrative Appeals Tribunal Act, s 27

This section sets out the processes that must be followed before application is made to the Administrative Appeals Tribunal. It allows time for the council's dispute resolution processes.

Part 6.3 Other provisions

108. False or misleading statements in applications etc

This section imposes 100 penalty units, if a person makes false or misleading statements or omits anything without which the statement is misleading. The section covers all the interactions with council or the Minister in relation to the accreditation and registration activities of both RTOs and higher education providers. It also covers applications for the establishment and recognition as a university in the ACT and approval to operate as a university in the ACT.

The section also covers false and misleading statements associated with visits by council to RTO and higher education premises.

109. Alternative verdict for offence against s 108

Section 109 gives an alternative verdict for an offence under section 108 so that a person may be found not guilty of making a false or misleading statement, but guilty of being reckless about whether the statement is false or misleading, if they have been given procedural fairness in relation to the finding of guilt.

110. Protection from civil liability

This section provides protection against civil liability for a person acting honestly in the exercise of a function under the Act. Any such liability attaches instead to the Territory.

111. Determination of fees

This section allows the Minister to set fees for the activities covered by this Act.

112. Approved forms

This section provides for the council to approve forms to be used for purposes outlined in this Act and to require RTOs or higher education providers and universities to use the approved forms.

113. Regulation-making power

Section 113 (Regulation-making power) provides the Executive with the power to make necessary regulations for the Act and includes a specific regulation-making power in relation to registration of details in the national register or the ACT register of higher education providers.

Chapter 7 Transitional

114. Details on national register on commencement

Entries on the National Register on 1 July 2003 are taken to provide the details of transitional providers and courses.

This Schedule ensures all activities concerning accreditation of courses and registration of providers, both VET and Higher Education, covered by the previous Act, are transferred directly and completely under this Act. This ensures any conditions applied to the RTO or Higher Education provider are also transitioned.

115. Registration of transitional RTOs

This section makes explicit that all registration details and conditions in place under the *Vocational Education and Training Act 1995* are transferred directly under this Act.

If RTO details had not been recorded on the national register prior to the transition date the council must record those details on the national register.

116. Accreditation of transitional vocational and higher education courses

This section makes explicit that a course of vocational education or higher education course that was accredited under the *Vocational Education and Training Act 1995* immediately before 1 July 2003 is taken to be an accredited course under this Act. All details of the accredited course remain the same, including expiry dates and conditions placed on the accreditation.

117. Modification of ch 7's operation

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

118. Expiry of ch 7

This chapter expires on 30 June 2004.

Reviewable decisions

Schedule 1 (Reviewable decisions) sets out the decisions that are reviewable under part 6.2 and identifies the provision of the Act under which the decision is made and the person to be notified.

Dictionary

The dictionary is an important part of this Act as many of the terms used have assigned to them a nationally consistent meaning. The dictionary also points to the Legislation Act for some definitions.