NORTHERN TERRITORY OF AUSTRALIA

TRAINING AND SKILLS DEVELOPMENT ACT

As in force at 23 November 2018

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 23 November 2018

TRAINING AND SKILLS DEVELOPMENT ACT

An Act to provide for vocational education and training, to establish the Northern Territory Training Commission, to repeal the *Northern Territory Employment and Training Act*, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Training and Skills Development Act*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Object of Act

(1) The object of this Act is to enable the provision in the Territory of nationally recognised vocational education and training that:

(a) meets the present and future needs of government, industry and the community; and

(b) supports employment and economic growth.

(2) In enacting this Act the Legislative Assembly:

(a) recognises that the providers of vocational education and training, and the courses they provide, are regulated in the Territory under a Commonwealth Act that seeks to provide for national consistency in that regulation; and

(b) recognises the importance of protecting and enhancing quality, flexibility, innovation, transparency, access, equity, efficiency, effectiveness and responsiveness in vocational education and training in the Territory; and

(c) recognises the importance for the economic prosperity of the Territory of a strong vocational education and training sector that grows and develops; and

(d) seeks to ensure that the delivery of vocational education and training in the Territory is kept under continuous review so that any necessary reforms to it can be quickly implemented.

4 Definitions

In this Act:

acting in an official capacity, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

affected person, see section 88(2).

apprentice, see section 5.

apprenticeship means employment-based training undertaken by an apprentice.

approved apprenticeship means an apprenticeship of a type approved under section 36.

approved employer means an employer approved under section 38.

approved form means a form approved under section 106.

approved qualification means a nationally recognised qualification approved under section 34.

approved RTO means an RTO approved under section 57.

approved traineeship means a traineeship of a type approved under section 36.

authorised officer means a person appointed under section 80 as an authorised officer.

CEO means the Chief Executive Officer.

certifiable component, in relation to a nationally recognised qualification that an employee is seeking to attain, means a component of the qualification in respect of which:

(a) if the employee attains the component and all of the other components of the qualification – a VET qualification must be awarded under section 67; or

(b) if the employee attains the component but does not attain all of the other components of the qualification – a statement of attainment must be issued under section 66(2).

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* (Cth).

delegate decision means a reviewable decision that is made by a delegate of the CEO.

internal reviewer means a public sector employee appointed under section 92(1) to review a delegate decision and to make a recommendation to the CEO in relation to the decision under section 94(2).

nationally recognised qualification means a qualification specified in a VET accredited course or in a training package.

parties, in relation to a training contract, means:

(a) the employer; and

(b) the apprentice or trainee; and

(c) if the apprentice or trainee is under 18 years of age – a parent or guardian of the apprentice or trainee.

prohibited employer means an employer declared to be a prohibited employer under section 40.

registered training contract means a training contract registered under section 50(1).

registered training organisation, see section 3 of the Commonwealth Act.

reviewable decision, see section 88(1).

RTO means a registered training organisation.

show cause notice, see section 41.

trainee, see section 6.

traineeship means employment-based training undertaken by a trainee.

training contract, see section 45(1).

training package means an integrated set of competency standards and assessment guidelines leading to the award of the nationally recognised qualification specified in the package.

training package qualification, in relation to a training package, means the nationally recognised qualification specified in the training package.

training plan, see section 54(1).

Tribunal means the Northern Territory Civil and Administrative Tribunal.

Tribunal affected person, see section 97(3).

type, of apprenticeship or traineeship, means a type of apprenticeship or traineeship approved under section 36(1).

VET means vocational education and training.

VET accredited course, see section 3 of the Commonwealth Act.

VET qualification means a formal certification awarded to a person confirming that the person has attained the level of competency or skill specified in each of the certifiable components of a nationally recognised qualification.

Note for section 4

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

5 Apprentices

(1) An employee who is seeking to attain a nationally recognised qualification that is an approved qualification and that may be attained through being trained in an approved apprenticeship is an ***apprentice*** if a training contract for the approved apprenticeship has been signed by the persons mentioned in section 45(3).

(2) However, an employee is not an apprentice if:

(a) the employee's employer is a prohibited employer; or

(b) the employment of the person in the approved apprenticeship is not covered by an approval under section 38.

(3) An employee ceases to be an apprentice if the CEO decides to refuse to register the training contract under section 50(1).

6 Trainees

(1) An employee who is seeking to attain a nationally recognised qualification that is an approved qualification and that may be attained through being trained in an approved traineeship is a ***trainee*** if a training contract for the approved traineeship has been signed by the persons mentioned in section 45(3).

(2) However, an employee is not a trainee if:

(a) the employee's employer is a prohibited employer; or

(b) the employment of the person in the approved traineeship is not covered by an approval under section 38.

(3) An employee ceases to be a trainee if the CEO decides to refuse to register the training contract under section 50(1).

7 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

8 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 8

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Administration

29 Functions of CEO

The following are the functions of the CEO:

(a) to provide vocational education and training advice:

(i) to instrumentalities and agencies of the Crown in the Territory and, on request by the instrumentality or agency, to any similar instrumentality or agency elsewhere in Australia; and

(ii) on behalf of the Territory;

(b) to allocate funding for VET each year;

(d) any other functions conferred on the CEO by this or any other Act.

Note for section 29

The Minister may give directions to the CEO under section 31 with respect to the performance of the CEO's functions, or under the Financial Management Act with respect to the performance of the CEO's function under paragraph (b).

30 Powers of CEO

The CEO has the powers necessary to perform the CEO's functions under this Act.

31 CEO subject to Ministerial direction

(1) The Minister may, either generally or in relation to a particular matter, give directions to the CEO with respect to the exercise of the CEO's powers or the performance of the CEO's functions.

(2) A direction is to be given by written notice addressed to the CEO.

(3) The CEO must give effect to a direction.

(4) However, the CEO cannot be given a direction that is not permitted to be given to a CEO under the *Public Sector Employment and Management Act* or any other Act.

32 Delegation by CEO

(1) The CEO may delegate to a public sector employee any of the CEO's powers and functions under this Act.

(2) The CEO may delegate to a body any of the CEO's powers and functions under Part 3 or 4.

(3) A body to which a power or function of the CEO has been delegated under subsection (2) may delegate that power or function to a person employed by, or otherwise connected with, the body.

Part 3 Apprenticeships and traineeships

Division 1 Approval by CEO

33 CEO to consider industry needs

The CEO must have regard to the requirements of industry in the Territory in determining whether:

(a) to approve a nationally recognised qualification under section 34; or

(b) to approve a type of apprenticeship or traineeship under section 36(1).

34 Approval of nationally recognised qualifications

The CEO may approve a nationally recognised qualification that an employee may seek to attain by completing an approved apprenticeship or approved traineeship.

35 List of approved nationally recognised qualifications

(1) The CEO may establish and maintain a list of approved qualifications and publish the list, as existing from time to time, on a website maintained by the Agency.

(2) The CEO must, in a list mentioned in subsection (1), specify in relation to each listed approved qualification:

(a) whether that qualification may be attained through completing an approved apprenticeship or an approved traineeship; and

(b) the maximum number of apprentices or trainees seeking to attain the qualification that may be employed at any one time by any one employer.

36 Approval of types of apprenticeships or traineeships

(1) The CEO may approve a type of apprenticeship or traineeship that, if completed by an employee, results in the employee attaining an approved qualification that is:

(a) the nationally recognised qualification specified in a VET accredited course; or

(b) a training package qualification.

(2) An approval under subsection (1) is to specify:

(a) the name of the type of apprenticeship or traineeship; and

(b) the qualification that will be attained by completing that type of apprenticeship or traineeship.

Division 2 Employers must be approved to employ apprentices or trainees

37 Approval before employing apprentice or trainee

(1) A person (the ***employer***) commits an offence if:

(a) the employer employs a person who is undertaking an approved apprenticeship or approved traineeship; and

(b) the apprenticeship or traineeship starts; and

(c) the employment of the person by the employer in the apprenticeship or traineeship is not covered by an approval under section 38.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

38 Approval of employer

(1) A person may apply to the CEO for approval to employ:

(a) one or more apprentices in an approved apprenticeship; or

(b) one or more trainees in an approved traineeship.

(2) An application must be made in the approved form.

(3) The CEO may grant the approval (subject to the conditions, if any, that the CEO considers appropriate) or refuse to grant the approval.

(4) However, the approval:

(a) only covers the employment of apprentices or trainees each of whom is at least 15 years of age, unless the employment of an apprentice or trainee younger than that is permitted under a relevant award, industrial agreement or enterprise agreement; and

(b) is subject to the employer providing each apprentice or trainee with premises, equipment, method of training and supervision suitable for the approved apprenticeship or approved traineeship.

(5) The CEO must give written notice to the applicant stating the following:

(a) the CEO's decision on the application;

(b) if the decision is to grant the approval:

(i) the name of the employer to whom the approval is granted; and

(ii) the approved apprenticeship or approved traineeship that may be offered by the employer; and

(iii) the maximum number of apprentices or trainees seeking to attain a specified approved qualification that may be employed at any one time by the employer as specified in the list published under section 35(1); and

(iv) the other conditions, if any, to which the grant of the approval is subject;

(c) if the decision is to refuse to grant the approval – the reasons for the refusal.

(6) Subsection (7) applies to an approval that is subject to conditions that are to be complied with before a training contract for the approved apprenticeship or approved traineeship may be entered into by the employer.

(7) Without affecting any other conditions to which the grant of the approval is subject, the approval does not have effect until the conditions mentioned in subsection (6) are complied with.

39 Variation or revocation of approval of employer

(1) The CEO may vary or revoke an approval granted under section 38:

(a) on an application by the employer in the approved form; or

(b) on the CEO's own initiative.

(2) The CEO may vary an approval under subsection (1)(a) only if satisfied that the variation will not adversely affect the training of an apprentice or trainee.

(3) The CEO may vary an approval under subsection (1)(b) only if satisfied that the variation is necessary to ensure that the training of an apprentice or trainee is provided satisfactorily.

(4) The CEO may revoke an approval under subsection (1)(b) only if satisfied of one of the following:

(a) the employer has failed to comply with a condition to which the approval is subject;

(b) the employer, or an apprentice or trainee employed by the employer under the approval, has contravened this Act, the Regulations (if any) or a registered training contract to which the employer and the apprentice or trainee are parties;

(c) the premises, equipment, method of training or supervision provided by the employer to the apprentice or trainee is no longer suitable for the approved apprenticeship or approved traineeship to which the approval relates.

(5) If the CEO proposes to vary or revoke an approval under subsection (1)(b), the CEO must, by written notice to the employer:

(a) inform the employer of the proposal and the reasons for it; and

(b) advise the employer that the employer may, by a specified date (being within 14 days after giving the notice) make a submission to the CEO in relation to the proposal.

(6) After the date specified in the notice under subsection (5) for making a submission, the CEO must:

(a) if the employer has made a submission – consider that submission; and

(b) in any event – decide:

(i) to vary or revoke the approval as proposed in the notice under subsection (5); or

(ii) not to vary or revoke the approval; or

(iii) for a variation – to vary the approval differently than as proposed in the notice under subsection (5).

(7) The CEO must, within 14 days after exercising a power under subsection (1), give written notice of the decision to the employer.

(8) A decision of the CEO under this section takes effect on:

(a) the date on which a notice is given under subsection (7); or

(b) a later date determined by the CEO and specified in the notice.

Division 3 Prohibited employers

40 Declaration as prohibited employer

(1) The CEO may declare an employer to be a prohibited employer if the CEO is satisfied that the employer is not a suitable person to employ an apprentice or trainee.

(2) The declaration may be in force for:

(a) a period specified in it; or

(b) an indefinite period.

(3) The declaration must state that the employer must not employ any apprentice or trainee while the declaration is in force.

(4) In deciding whether or not the employer is suitable to employ an apprentice or trainee, the CEO must have regard to the following:

(a) the employer's ability to provide, or arrange to provide, an apprentice or trainee with the premises, equipment, method of training and supervision required under a training plan for the apprentice or trainee;

(b) the employer's record in delivering training to apprentices or trainees;

(c) the past behaviour of the employer, or of an employee of the employer, towards an apprentice or trainee;

(d) whether the employer has contravened an Act of the Territory, a State, another Territory or the Commonwealth relating to employment including:

(i) this Act; and

(ii) the *Northern Territory Employment and Training Act* (repealed); and

(iii) the *Work Health and Safety (National Uniform Legislation) Act*; and

(iv) the *Fair Work Act 2009* (Cth);

(e) whether the employer has been convicted of an indictable offence;

(f) any other matter the CEO considers relevant to the decision whether or not to declare the employer to be a prohibited employer.

41 CEO must give show cause notice before making declaration

(1) This section applies if the CEO is proposing to make a declaration under section 40.

(2) The CEO must first give the employer a notice (a ***show cause notice***) stating the following:

(a) that the CEO proposes to declare the employer to be a prohibited employer;

(b) the reasons for the proposed declaration;

(c) whether the proposed declaration is to apply:

(i) indefinitely; or

(ii) for the period stated in the show cause notice;

(d) that the proposed declaration is to apply to all apprenticeships and traineeships;

(e) that the employer may, by a specified date (being within 14 days after the notice is given), make a submission to the CEO in relation to the proposed declaration.

42 Notice of decision about declaration after show cause notice

(1) After the date specified for making a submission in the show cause notice, the CEO must:

(a) if the employer has made a submission – consider that submission; and

(b) in any event – decide:

(i) to make the declaration as proposed in the show cause notice; or

(ii) not to make the declaration; or

(iii) to make a declaration that is different from the one proposed in the notice.

(2) If the CEO decides not to declare the employer to be a prohibited employer, the CEO must immediately give the employer written notice of the decision.

(3) If the CEO decides to declare the employer to be a prohibited employer, the CEO must immediately give the employer written notice of the decision, including the reasons for the decision.

(4) The notice under subsection (3) must also state:

(a) when the declaration takes effect (which must not be earlier than the date of the notice); and

(b) that the employer may apply for the revocation of the declaration; and

(c) how the employer may apply for that revocation.

43 Revocation of declaration as prohibited employer

(1) A prohibited employer may apply to the CEO in the approved form requesting the CEO to revoke a declaration under section 40.

(2) The CEO may completely revoke the declaration if the CEO is satisfied that the employer is no longer an unsuitable person to employ an apprentice or trainee.

(3) The CEO may partly revoke the declaration if the CEO is satisfied that the employer is no longer an unsuitable person to employ an apprentice or trainee in a particular type of approved apprenticeship or approved traineeship.

(4) If the CEO decides to completely revoke the declaration, the CEO must immediately give the employer written notice of the decision.

(5) If the CEO decides to partly revoke the declaration or not to revoke the declaration, the CEO must immediately give the employer written notice of the decision, including the reasons for the decision.

44 Prohibited employer not to contravene declaration

(1) An employer commits an offence if:

(a) a declaration is in force; and

(b) the employer engages in conduct; and

(c) the conduct results in a contravention of the declaration.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

(4) In this section:

declaration means:

(a) a declaration made under section 40; or

(b) if the declaration has been partly revoked under section 43 – the declaration as partly revoked.

Division 4 Training contracts

Subdivision 1 Registration of training contracts

45 Training contracts

(1) A training contract is a binding written agreement between an employer and an apprentice or trainee setting out their respective obligations in relation to the approved apprenticeship or approved traineeship in which the apprentice or trainee is employed.

(2) A training contract may specify that training is to be provided to an apprentice or trainee:

(a) on a part-time or a full-time basis; or

(b) in conjunction with education or training provided at a school (as defined in section 5 of the *Education Act*).

(3) A training contract must be in the approved form and be signed by:

(a) the employer; and

(b) the apprentice or trainee; and

(c) if the apprentice or trainee is under 18 years of age – a parent or guardian of the apprentice or trainee.

46 Probationary period of training contract

(1) The probationary period of a training contract is 3 months from its commencement.

(2) An employer who has entered into a training contract may, by written notice to the CEO before the end of its probationary period, extend that period by not more than 3 months.

(3) The probationary period of a training contract may not be extended more than once under subsection (2).

47 Training contract for apprenticeship or traineeship

(1) A person (the ***employer***) commits an offence if:

(a) the employer employs a person who is undertaking an approved apprenticeship or approved traineeship; and

(b) the apprenticeship or traineeship starts; and

(c) a training contract in the approved form has not been signed by the persons mentioned in section 45(3).

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

48 Registration of training contract

(1) A person (the ***employer***) commits an offence if:

(a) a training contract in the approved form has been signed by the persons mentioned in section 45(3); and

(b) 28 days have passed since the apprenticeship or traineeship started; and

(c) the employer has not submitted the contract to the CEO under section 49.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

49 Submission of training contract for registration

An employer must submit to the CEO, for registration under section 50(1), a training contract in the approved form that has been signed by the persons mentioned in section 45(3).

50 Registration of training contracts

(1) The CEO may register a training contract submitted for registration under section 49 (subject to the conditions, if any, that the CEO considers appropriate) or refuse to register the contract.

(2) If a training contract is registered under subsection (1), the CEO must, as soon as reasonably practicable, provide a certificate of registration to the employer who submitted the contract.

(3) A certificate of registration must show the conditions, if any, to which the registration is subject.

(4) If the CEO decides to refuse to register a training contract, the CEO must immediately give the employer who submitted the contract written notice of the decision, including the reasons for the decision.

51 Registration of multiple contracts

(1) Except in the circumstances mentioned in subsection (2), the CEO must not register a training contract under section 50(1) for an apprentice or trainee that would operate concurrently for any period with another such contract for the apprentice or trainee.

(2) The circumstances are that the CEO is satisfied that:

(a) each of the following consents to the apprentice or trainee entering into the contract:

(i) the apprentice or trainee;

(ii) if the apprentice or trainee is under 18 years of age – a parent or guardian of the apprentice or trainee;

(iii) each employer of the apprentice or trainee under a training contract; and

(b) the training contracts do not all relate to the same approved qualification; and

(c) an approved qualification that will be attained on the successful completion of one training contract is not part of an approved qualification that will be attained on the successful completion of another training contract, irrespective of whether the qualifications are at the same level; and

(d) training that is to be provided under one of the training contracts by someone other than the employer will not be scheduled to be delivered at the same time as such training under another one of the training contracts; and

(e) the apprentice or trainee intends to apply an equal effort under the training contracts.

52 Cancellation of registration of training contract

(1) Despite any other provision of this Act or the conditions to which a registered training contract is subject, the CEO may cancel the registration of the contract by giving written notice to the persons who signed the contract.

(2) A notice under subsection (1) must specify the grounds for the cancellation.

53 Parties bound by training contracts

(1) This section applies to a training contract:

(a) that has been registered under section 50(1); or

(b) that has been submitted under section 49 for registration and in relation to which the CEO has not given a notice of a decision to refuse to register under section 50(4).

(2) The apprentice or trainee is bound by the training contract until it is terminated, cancelled or completed under this Act, whichever occurs first, even if the apprentice or trainee was under 18 years of age at the time of signing the contract.

(3) A parent or guardian of an apprentice or trainee who signed the training contract in accordance with section 45(3)(c) is bound by the contract until whichever of the following occurs first:

(a) the apprentice or trainee attains the age of 18 years;

(b) the contract is terminated, cancelled or completed under this Act.

(4) The employer is bound by the training contract until it is terminated, cancelled or completed under this Act, whichever occurs first.

Subdivision 2 Training plans

54 Training plans

(1) A training plan is a schedule of the certifiable components to be attained by an apprentice or trainee in order to be eligible to be awarded the approved qualification to which the apprenticeship or traineeship relates.

(2) A training plan is to be determined, and agreed to, by the employer, an approved RTO and the apprentice or trainee.

(3) The approved RTO must submit to the CEO the training plan agreed to under subsection (2).

55 Offence if training plan not submitted to CEO

(1) An approved RTO commits an offence if:

(a) a training plan relating to a training contract is agreed to under section 54(2) by the persons mentioned in that section; and

(b) the probationary period of the training contract ends; and

(c) the approved RTO has not submitted the training plan to the CEO under section 54(3).

Maximum penalty: 10 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

56 Recognition of qualifications and statements of attainment

(1) An approved RTO (the ***training plan RTO***) commits an offence if:

(a) a training plan is agreed under section 54(2) by the persons mentioned in that section; and

(b) the apprentice or trainee has attained a nationally recognised qualification, or been issued with a statement of attainment in respect of a certifiable component of one, by another RTO; and

(c) the training plan requires the apprentice or trainee to attain the same qualification, or be issued with a statement of attainment in respect of the same component, from the training plan RTO.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

57 Approval of RTO

(1) An RTO may apply to the CEO for approval to provide training for VET accredited courses or training package qualifications to apprentices or trainees who are undertaking an approved apprenticeship or approved traineeship.

(2) An application must be in the approved form.

(3) The CEO may grant the approval (subject to the conditions, if any, that the CEO considers appropriate) or refuse to grant the approval.

(4) The CEO must give written notice to the applicant stating the following:

(a) the CEO's decision on the application;

(b) if the decision is to grant the approval – the conditions, if any, to which the grant of the approval is subject;

(c) if the decision is to refuse to grant the approval – the reasons for the refusal.

58 Approval before providing training for course or training package qualification

(1) An RTO commits an offence if:

(a) the RTO provides training for a VET accredited course or training package qualification under a training plan to an apprentice or trainee who is undertaking an approved apprenticeship or approved traineeship; and

(b) the RTO is not approved under section 57 to provide the training to the apprentice or trainee.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

59 Variation or revocation of approval

(1) The CEO may vary or revoke an approval granted under section 57:

(a) on an application by the approved RTO in the approved form; or

(b) on the CEO's own initiative.

(2) The CEO may vary an approval under subsection (1)(a) only if satisfied that the variation will not adversely affect the provision of training for a VET accredited course or training package qualification to an apprentice or trainee who is undertaking an approved apprenticeship or approved traineeship.

(3) The CEO may vary an approval under subsection (1)(b) only if satisfied that the variation is necessary to ensure that training for a VET accredited course or training package qualification is provided satisfactorily to an apprentice or trainee mentioned in subsection (2).

(4) The CEO may revoke an approval under subsection (1)(b) only if satisfied that the RTO has failed to comply with a condition to which the approval is subject.

(5) If the CEO proposes to vary or revoke an approval under subsection (1)(b), the CEO must, by written notice to the RTO:

(a) inform the RTO of the proposal and the reasons for it; and

(b) advise the RTO that the RTO may, by a specified date (being within 14 days after giving the notice) make a submission to the CEO in relation to the proposal.

(6) After the date specified in the notice under subsection (5) for making a submission, the CEO must:

(a) if the RTO has made a submission – consider that submission; and

(b) in any event – decide:

(i) to vary or revoke the approval as proposed in the notice under subsection (5); or

(ii) not to vary or revoke the approval; or

(iii) for a variation – to vary the approval differently than as proposed in the notice under subsection (5).

(7) The CEO must, within 14 days after exercising a power under subsection (1), give written notice of the decision to the RTO.

(8) A decision of the CEO under this section takes effect on:

(a) the date on which a notice is given under subsection (7); or

(b) a later date determined by the CEO and specified in the notice.

Subdivision 3 Termination, cancellation and suspension of training contracts

60 Termination of training contract during probationary period

(1) The employer who is a party to a training contract may, by giving written notice of termination to the apprentice or trainee, terminate the contract at any time during the probationary period of the contract.

(2) The apprentice or trainee who is a party to a training contract may, with the consent of a parent or guardian if the apprentice or trainee is under 18 years of age, by giving written notice to the employer terminate the contract at any time during the probationary period of the contract.

(3) A party to a training contract who gives written notice of termination under subsection (1) or (2) to another party to the contract must, as soon as reasonably practicable and in any event within 14 days after giving the notice under subsection (1) or (2), give a copy of the notice to the CEO.

(4) The CEO must, immediately after being given a copy of a notice of termination under subsection (3), notify the parties to the training contract of that fact.

(5) A notice of termination has effect from the date a copy of the notice is given to the CEO under subsection (3) or, if the notice specifies a later effective date, from the later date.

(6) A party to a training contract commits an offence if:

(a) the party gives to another party to the contract written notice of termination under subsection (1) or (2); and

(b) a period of 14 days has passed since the notice was given; and

(c) a copy of the notice has not been given to the CEO under subsection (3).

Maximum penalty: 10 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

Note for section 60

See section 46 for the probationary period of a training contract.

61 Cancellation of registered training contract by parties

(1) The parties to a registered training contract may at any time, by written notice signed by the parties, cancel the contract.

(2) The parties to a registered training contract who sign written notice of cancellation under subsection (1) must, as soon as reasonably practicable and in any event within 14 days after signing the notice under that subsection, give a copy of the notice to the CEO.

(3) The CEO must, immediately after being given a copy of a notice of cancellation under subsection (2), notify the parties to the registered training contract of that fact.

(4) A notice of cancellation has effect from the date a copy of the notice is given to the CEO under subsection (2) or, if the notice specifies a later effective date, from the later date.

(5) Each party to a registered training contract commits an offence if:

(a) the parties have signed written notice of cancellation under subsection (1); and

(b) a period of 14 days has passed since the last of the parties to sign the notice did so; and

(c) a copy of the notice has not been given to the CEO under subsection (2).

Maximum penalty: 10 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

(7) It is a defence to a prosecution of a party to a registered training contract for an offence against subsection (5) if another party to the contract gave a copy of the notice of cancellation to the CEO within the period required by that subsection.

62 Suspension of registered training contract by parties

(1) The parties to a registered training contract may at any time, by written notice signed by the parties, suspend the operation of the contract for a period of not more than 12 months specified in the notice.

(2) The parties to a registered training contract who sign written notice of suspension under subsection (1) must, as soon as reasonably practicable and in any event within 14 days after signing the notice under that subsection, give a copy of the notice to the CEO.

(3) The CEO must, immediately after being given a copy of a notice of suspension under subsection (2), notify the parties to the registered training contract of that fact.

(4) A notice of suspension has effect from the date a copy of the notice is given to the CEO under subsection (2) or, if the notice specifies a later effective date, from the later date.

(5) Each party to a registered training contract commits an offence if:

(a) the parties have signed written notice of suspension under subsection (1); and

(b) a period of 14 days has passed since the last of the parties to sign the notice did so; and

(c) a copy of the notice has not been given to the CEO under subsection (2).

Maximum penalty: 10 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

(7) It is a defence to a prosecution of a party to a registered training contract for an offence against subsection (5) if another party to the contract gave a copy of the notice of suspension to the CEO within the period required by that subsection.

63 Suspension of training contract by CEO

(1) The CEO may, by written notice given to the parties to a registered training contract, suspend the operation of the contract if the CEO is satisfied that:

(a) a party to the contract is unable to comply with it; or

(b) a party to the contract has contravened this Act, the Regulations (if any) or the contract.

(2) A notice given under subsection (1) must specify the grounds for the suspension.

(3) A notice given under subsection (1)(a) may specify a period of suspension of not more than 12 months.

(4) If the CEO suspends a registered training contract under subsection (1), the suspension:

(a) takes effect when the notice of suspension has been given to the parties to the contract; and

(b) remains in force until the end of the suspension period specified in the notice.

(5) The CEO may, by written notice given to the parties to a registered training contract before the end of a suspension period mentioned in subsection (4)(b):

(a) shorten that period; or

(b) extend that period by not more than 12 months.

Subdivision 4 Assignment of registered training contracts

64 Assignment of registered training contract

(1) The parties to a registered training contract may jointly apply to the CEO, in the approved form, for approval to assign the contract, either temporarily or permanently, to another approved employer.

(2) The CEO may grant the approval (subject to the conditions, if any, that the CEO considers appropriate) or refuse to grant the approval.

(3) The CEO must, as soon as reasonably practicable after receiving an application under subsection (1), give written notice to the parties stating the following:

(a) the CEO's decision on the application;

(b) if the decision is to grant the approval – the conditions, if any, to which the grant of the approval is subject;

(c) if the decision is to refuse to grant the approval – the reasons for the refusal.

(4) The CEO must, at the same time as the CEO gives a notice mentioned in subsection (3)(b) to the parties, give a copy of the notice to the employer to whom the registered training contract is proposed to be assigned.

(5) An approval that is subject to conditions that are to be complied with before a registered training contract may be assigned does not have effect until those conditions are complied with.

(6) A purported assignment of a registered training contract without the approval of the CEO is of no effect.

(7) If the CEO approves an application for the assignment of a registered training contract, the following must, within 14 days after the approval, sign a document in the approved form for assigning the contract (an ***assigning document***):

(a) both employers;

(b) the apprentice or trainee;

(c) if the apprentice or trainee is under 18 years of age – a parent or guardian of the apprentice or trainee.

(8) A registered training contract is taken to have been assigned if:

(a) the apprentice or trainee is employed for more than 14 days by the employer to whom the assignment of the contract has been approved under this section; and

(b) an assigning document has not been signed as required by subsection (7) within that period of 14 days.

(9) An assignment of a registered training contract is taken to come into effect on the day on which the apprentice or trainee starts employment with the employer to whom the contract is, or is taken to be, assigned.

(10) The CEO may give any directions that the CEO considers appropriate in relation to how a registered training contract may be assigned.

(11) A person commits an offence if:

(a) a direction is given to the person under subsection (10); and

(b) the person intentionally engages in conduct; and

(c) the conduct results in a contravention of the direction and the person is reckless in relation to the result.

Maximum penalty: 100 penalty units.

(12) Strict liability applies to subsection (11)(a).

(13) The CEO may require an employer to whom a registered training contract is assigned to sign a new training contract that, when registered by the CEO, is to be the registered training contract in place of the assigned training contract.

65 Probationary period of assigned contract

(1) An assigned training contract has a probationary period of 3 months from the date on which it is, or is taken to be, assigned.

(2) Subsection (3) applies if the CEO is satisfied that the employer to whom a training contract is assigned is substantially the same as the employer from whom it was assigned.

(3) The CEO may, by written notice to the employer to whom the contract is assigned, declare that:

(a) the probationary period of the contract is a specified period of not more than 3 months; or

(b) there is no probationary period of the contract.

Note for subsection (3)

Subdivision 3 applies to an assigned training contract in the same way as it applies to one that has not been assigned.

Subdivision 5 Awards under registered training contracts

66 Statement of attainment

(1) Subsection (2) applies if:

(a) an RTO has assessed an apprentice or trainee as having attained the level of competency or skill specified in a certifiable component of a nationally recognised qualification that is specified in the registered training contract to which the apprentice or trainee is a party; and

(b) the apprentice or trainee does not intend to complete the qualification.

(2) The RTO must issue a statement of attainment to the apprentice or trainee in respect of the component.

(3) An RTO commits an offence if:

(a) the RTO has assessed an apprentice or trainee as having attained the level of competency or skill mentioned in subsection (1)(a); and

(b) the RTO does not give written notice of the assessment to the CEO within 14 days after the assessment.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

67 Award of VET qualification

(1) Subsection (2) applies if an RTO assesses an apprentice or trainee as having attained the level of competency or skill specified in each of the certifiable components of a nationally recognised qualification that is specified in the registered training contract to which the apprentice or trainee is a party.

(2) The RTO must:

(a) seek confirmation from the employer and the apprentice or trainee of the attainment of the level of competency or skill mentioned in subsection (1); and

(b) if that confirmation is received, award a VET qualification to the apprentice or trainee in respect of that attainment as soon as reasonably practicable.

(3) An RTO commits an offence if:

(a) an apprentice or trainee is assessed as mentioned in subsection (1); and

(b) the RTO does not give written notice of the assessment and its confirmation by the employer and the apprentice or trainee to the CEO within 14 days after receiving that confirmation.

Maximum penalty: 100 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

(6) If the CEO receives notice of an assessment, the CEO must issue to the apprentice or trainee a document indicating that the apprentice or trainee has completed the training specified in the registered training contract.

(7) A registered training contract is, on and from the date on which the CEO issues the document under subsection (6) in relation to the contract, taken to have been completed and, as between the parties, to have no further effect.

68 Resolution of disputes

(1) A party to a registered training contract may apply to the CEO for the CEO to resolve a dispute between the parties to the contract relating to an obligation of a party under the contract.

(2) If an application is made under subsection (1), the CEO must, as soon as reasonably practicable after receiving the application, attempt to resolve the dispute.

Division 5 Wages of apprentice or trainee

69 Rate of wages of apprentices and trainees

(1) This section applies subject to the terms of any relevant award, industrial agreement or enterprise agreement.

(2) Subject to section 71(3), the rate of wages payable to apprentices and trainees is to be determined by the CEO based on their levels of competence.

70 Apprentices and trainees to be paid at determined rate

(1) A person commits an offence if:

(a) the person intentionally employs, attempts to employ or authorises or permits the employment of an apprentice or trainee at a rate of wages; and

(b) the rate is lower than the applicable rate determined under section 69(2).

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1)(b).

71 Slackness of trade

(1) The CEO may, in the circumstances mentioned in subsection (2), approve an employer employing an apprentice or trainee for a period, in a week or month, less than the complete week or month.

(2) The circumstances are that the CEO is satisfied that the employer is, or is likely to be, temporarily unable to provide sufficient work to keep the apprentice or trainee fully employed during the complete week or month.

(3) If the CEO approves, under subsection (1), the employment of an apprentice or trainee for a period, in a week or month, less than the complete week or month, the CEO may, by written notice given to

the employer, fix the rate of wages payable to the apprentice or trainee for that week or month.

72 Stand down

(1) This section applies if an employer of an apprentice or trainee is unable, because of an industrial occurrence, to keep the apprentice or trainee fully employed during the normal working hours of a day.

(2) Subject to subsections (3) and (4) and with the prior approval of the CEO, the employer may deduct from the wages due to the apprentice or trainee an amount equal to the wages for the part of the day, in excess of 20 minutes, during which the apprentice or trainee could not be fully employed.

(3) An apprentice or trainee who is required to attend for work on a day but, because of an industrial occurrence, cannot be fully employed during the normal working hours of the day, is entitled to receive payment equal to the apprentice's or trainee's wages for 2 hours work.

(4) An apprentice or trainee who starts work on a day but, because of an industrial occurrence, cannot be fully employed during the normal working hours of the day is entitled to receive payment equal to the greater of the following:

(a) the apprentice's or trainee's wages for 4 hours work;

(b) the apprentice's or trainee's wages for the number of hours actually worked by the apprentice or trainee on that day.

(5) In this section:

industrial occurrence means a breakdown in machinery or a stoppage of work for a reason for which an employer cannot reasonably be held responsible.

73 Proceeding for recovery of wages or other remuneration

In a proceeding brought against an employer for the recovery of wages or other remuneration payable to an apprentice or trainee, it is not a defence to the proceeding that the apprentice or trainee was employed in contravention of this Act.

Division 6 Employer obligations

74 Hindering compliance with requirement

An employer who is a party to a registered training contract with an apprentice or trainee commits an offence if:

(a) the employer knows that an RTO has imposed a requirement on the apprentice or trainee relating to training or assessment; and

(b) the employer intentionally engages in conduct; and

(c) the conduct results in hindering the apprentice or trainee from complying with the requirement and the employer is reckless in relation to the result.

Maximum penalty: 100 penalty units.

75 Progress records

(1) An employer who is a party to a registered training contract with an apprentice or trainee must, while the contract remains in force, maintain progress records in relation to the apprentice or trainee.

(2) An employer who is a party to a registered training contract commits an offence if:

(a) the employer intentionally engages in conduct; and

(b) the conduct results in the employer not maintaining progress records mentioned in subsection (1) and the employer is reckless in relation to the result.

Maximum penalty: 100 penalty units.

(3) In this section:

progress records means records that are adequate for enabling the CEO or a relevant RTO to ascertain the progress of the apprentice or trainee towards attaining the level of competency or skill specified in a certifiable component of a nationally recognised qualification specified in the registered training contract.

76 Requirement to keep specified records

(1) The CEO may, by written notice given to an employer who is a party to a registered training contract, require the employer to keep, in the manner and form specified in the notice, records of a kind specified in the notice.

(2) An employer commits an offence if:

(a) a notice has been given to the employer under subsection (1); and

(b) the employer intentionally engages in conduct; and

(c) the conduct results in a contravention of the notice and the employer is reckless in relation to the result.

Maximum penalty: 100 penalty units.

(3) Strict liability applies to subsection (2)(a).

77 Requirement to provide copies of records

(1) The CEO may, by written notice given to an employer, require the employer to provide to the CEO, within 7 days after the date of the notice or a longer period specified in the notice, copies of records relating to an apprenticeship or traineeship specified in the notice.

(2) An employer commits an offence if:

(a) a notice has been given to the employer under subsection (1); and

(b) the employer intentionally engages in conduct; and

(c) the conduct results in a contravention of the notice and the employer is reckless in relation to the result.

Maximum penalty: 100 penalty units.

(3) Strict liability applies to subsection (2)(a).

78 Travelling expenses and allowances

(1) The CEO may establish a policy as to when travelling expenses and allowances may be paid to an apprentice or trainee who is required to travel to undertake training as part of an approved apprenticeship or approved traineeship.

(2) The CEO may approve the payment of travelling expenses and allowances to an apprentice or trainee in accordance with the policy mentioned in subsection (1).

79 Register

The CEO must establish and maintain a register containing the following:

(a) the names of all apprentices and trainees in each type of approved apprenticeship or approved traineeship;

(b) particulars of all registered training contracts;

(c) the names and addresses of all approved employers;

(d) a record of all terminations, cancellations, suspensions and assignments of registered training contracts;

(e) for each type of approved apprenticeship or approved traineeship – the names and particulars of all persons who have completed the training specified under a registered training contract in respect of that type of apprenticeship or traineeship.

Part 4 Enforcement powers

80 Authorised officers

(1) The CEO may, in writing, appoint suitable persons as authorised officers for this Part.

(2) An authorised officer may (but need not) be a public sector employee.

81 Identity card

(1) The CEO must give a person who is an authorised officer an identity card stating the person's name and that the person is an authorised officer.

(2) The identity card must:

(a) show a recent photograph of the authorised officer; and

(b) show the card's date of issue and expiry; and

(c) be signed by the officer.

(3) This section does not prevent the issue of a single identity card to a person for this and another Act.

82 Return of identity card

(1) A person who ceases to be an authorised officer must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

83 Powers of entry

(1) An authorised officer may enter a place where, or where the officer reasonably believes, an apprentice or trainee is employed.

(2) Despite subsection (1), an authorised officer may not enter residential premises except with the consent of the occupier.

(3) An authorised officer who enters a place under this section must, at the request of the occupier:

(a) show the occupier the identity card issued to the officer under section 81; and

(b) permit the occupier to examine the card.

(4) If an authorised officer who enters a place under this section does not comply with subsection (3) in response to a request of the occupier, the officer must leave the place immediately.

84 Powers of authorised officers on entry

An authorised officer who enters a place under section 83 may do one or more of the following at the place:

(a) inspect and search the place and anything in the place to check for compliance with this Act, the Regulations (if any) or a registered training contract;

(b) inspect and test any equipment that the officer reasonably believes is used in the training of apprentices or trainees;

(c) inspect any facilities;

(d) inspect any work in progress that the officer reasonably believes relates to the training of apprentices or trainees;

(e) direct the occupier of the place to give the officer specified information about the training of apprentices or trainees at the place;

(f) direct the occupier of the place to produce any documents containing information about the training of apprentices or trainees at the place;

(g) inspect, take extracts from, or make copies of, documents produced under paragraph (f);

(h) operate any electronic equipment at the place for the purposes of retrieving or recording the information mentioned in paragraph (e) or document mentioned in paragraph (f);

(i) direct a person having the control of machinery at the place to do either or both of the following:

(i) stop the machinery;

(ii) give the machinery (including anything found on or in it) to another person, or remove it to another place, for a specified examination or for testing;

(j) detain or seize the machinery mentioned in paragraph (i) for examination or testing;

(k) make a record in relation to an exercise of a power for this section (including, for example, by taking a photograph or making a video recording).

85 Offence to contravene direction

(1) A person commits an offence if:

(a) an authorised officer has given a direction to the person under section 84(e), (f) or (i): and

(b) the person intentionally engages in conduct; and

(c) the conduct results in a contravention of the direction and the person is reckless in relation to the result.

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1)(a).

86 Obstruction of authorised officer

(1) A person commits an offence if:

(a) the person intentionally obstructs another person; and

(b) the other person is an authorised officer; and

(c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units.

(2) Strict liability applies to subsection (1)(b).

(3) In this section:

obstruct includes hinder and resist.

87 Misleading information

(1) A person commits an offence if:

(a) the person intentionally gives information to another person; and

(b) the other person is an authorised officer; and

(c) the person knows the information is misleading; and

(d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person intentionally gives a document to another person; and

(b) the other person is an authorised officer; and

(c) the document contains misleading information and the person has knowledge of that circumstance; and

(d) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) Strict liability applies to subsections (1)(b) and (2)(b).

(4) Subsection (2) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the other person's attention; and

(b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the document.

(5) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

Part 5 Review of decisions

88 Reviewable decisions

(1) A ***reviewable decision*** is a decision specified in Schedule 1.

(2) An ***affected person***, for a reviewable decision, is:

(a) a person specified in Schedule 1 opposite the decision; or

(b) if an apprentice or trainee who is under 18 years of age is a person specified in Schedule 1 opposite the decision – a parent or guardian of the apprentice or trainee.

89 Notice of delegate decision

(1) This section applies if a reviewable decision is a delegate decision.

(2) As soon as reasonably practicable after making a delegate decision, the delegate of the CEO must give written notice of the decision to each affected person.

(3) The notice must state the following:

(a) the delegate decision and the reasons for it;

(b) that the affected person may apply for an internal review of the decision under section 90;

(c) the period allowed for applying for an internal review.

90 Application for internal review

(1) An affected person for a delegate decision may apply to the CEO for an internal review of the decision.

(2) The application must be made within 28 days after written notice of the delegate decision is given to the affected person under section 89(2) or any longer period that the CEO allows.

(3) The application must:

(a) be in the approved form; and

(b) be accompanied by the fee (if any) prescribed by regulation; and

(c) state the grounds on which the application is made and the facts relied on to establish the grounds.

91 Effect of application on delegate decision

(1) The making of an application under section 90 does not stay the operation of the delegate decision.

(2) However, the CEO may stay the operation of the delegate decision pending completion of the review.

92 Appointment of internal reviewer

(1) The CEO may appoint a public sector employee to review a delegate decision and to make a recommendation to the CEO in relation to the decision under section 94(2).

(2) The CEO may act under subsection (1):

(a) on an application under section 90; or

(b) on the CEO's own initiative.

(3) The CEO must, as soon as reasonably practicable after deciding to act under subsection (2)(b), give written notice of the appointment of an internal reviewer to each affected person for the delegate decision.

(4) The CEO must, at the same time as giving a notice to each affected person under subsection (3), give a copy of the notice to the internal reviewer.

(5) The person who made the delegate decision cannot be the internal reviewer of that decision.

93 Review of delegate decision by internal reviewer

(1) On receipt of an application under section 90 or a copy of a notice under section 92(4), the internal reviewer must review the delegate decision.

(2) However, in the circumstances mentioned in subsection (3), the internal reviewer may reject an application under section 90 without reviewing the delegate decision.

(3) The circumstances for rejecting an application under subsection (2) are that the internal reviewer is satisfied that:

(a) the application is frivolous or vexatious; or

(b) the application was made after the period allowed by section 90(2) for making the application had expired; or

(c) the application relates to a matter that is the subject of an application to a court or tribunal.

(4) Without limiting subsection (3)(a), an application is frivolous or vexatious if, at the time the application was made:

(a) another application under section 90 for an internal review of the same delegate decision had been made by another affected person; and

(b) a decision has been made on the other application under section 95 or the other application has been rejected under subsection (2).

94 Conduct of review by internal reviewer

(1) In reviewing the delegate decision, the internal reviewer must:

(a) take into account any matter that the Regulations require the internal reviewer to take into account in reviewing the decision; and

(b) follow the procedures, if any, for review set out in the Regulations; and

(c) comply with the rules of natural justice.

(2) After reviewing the delegate decision, the internal reviewer must make a recommendation to the CEO on whether to:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute a new decision.

95 Decision by CEO on internal review

(1) After receiving a recommendation under section 94(2), the CEO must:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute a new decision.

(2) In making a decision under this section, the CEO is not bound by the recommendation made by the internal reviewer.

96 Notice of decision of CEO

(1) As soon as reasonably practicable after making a decision under section 95, the CEO must give written notice of the decision to the following persons:

(a) the applicant for the internal review;

(b) each person who could have applied for an internal review of the decision under section 90.

(2) The notice must state the following:

(a) the CEO's decision and the reasons for it;

(b) details of any right the person has under this Act to apply to the Tribunal for a review of the CEO's decision.

97 Tribunal reviews

(1) This section applies to:

(a) a reviewable decision that is not a delegate decision; and

(b) a decision under section 93(2) to reject an application under section 90; and

(c) a decision under section 95.

(2) The Tribunal has jurisdiction to review a decision mentioned in subsection (1).

(3) A Tribunal affected person, for a decision mentioned in subsection (1), is:

(a) for a reviewable decision that is not a delegate decision:

(i) a person specified in Schedule 1 opposite the decision; or

(ii) if an apprentice or trainee who is under 18 years of age is a person specified in Schedule 1 opposite the decision – a parent or guardian of the apprentice or trainee; and

(b) for a decision under section 93(2) to reject an application under section 90 – the person who made the application under section 90; and

(c) for a decision under section 95 – the applicant under section 90 and any other person who could have applied under that section.

(4) A Tribunal affected person for a decision mentioned in subsection (1) may apply to the Tribunal for a review of the decision.

Part 6 Miscellaneous matters

98 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

(b) the CEO;

(c) a delegate of the CEO;

(d) an internal reviewer.

(3) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

99 Unauthorised disclosure of confidential information

(1) A person commits an offence if:

(a) the person obtains information in the course of performing functions connected with the administration of this Act; and

(b) the person intentionally engages in conduct; and

(c) the conduct results in the disclosure of the information and the person is reckless in relation to the result.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

100 Prosecution

(1) A prosecution for an offence under this Act may be commenced by the CEO or a person authorised by the CEO.

(2) A document apparently signed by the CEO authorising a person to commence a particular prosecution is, in the absence of proof to the contrary, proof of the fact so stated.

101 Time for commencing prosecution

A prosecution for an offence under this Act must be commenced within 6 months after the day on which the commission of the alleged offence comes to the knowledge of a police officer or the CEO.

102 Criminal liability of executive officer of body corporate

(1) An executive officer of a body corporate commits an offence if:

(a) the body corporate commits an offence (a ***relevant offence***) by contravening a provision of this Act; and

(b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

(c) the officer failed to take reasonable steps to prevent the contravention; and

(d) the officer was reckless about whether the contravention would happen.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

(a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):

(i) the body corporate arranging regular professional assessments of the body corporate's compliance with the contravened provision;

(ii) the body corporate implementing any appropriate recommendation arising from an assessment under subparagraph (i);

(iii) the body corporate's representatives and contractors having a reasonable knowledge and understanding of the requirement to comply with the contravened provision;

(b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(3) Subsection (2) does not limit the matters the court may consider.

(4) This section does not affect the liability of the body corporate.

(5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.

(6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

(7) In this section:

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

103 Offence – other partners and managers taken to have committed offence of partner

(1) If a person (the ***offender***) who is a partner in a partnership commits an offence against a provision of this Act in the course of the activities of the partnership, each other partner in the partnership, and each other person who is concerned with, or takes part in, the management of the partnership, is:

(a) taken to have committed the offence; and

(b) liable to the same penalty for the offence as an individual.

(2) Subsection (1) does not apply if:

(a) the other partner or person was not in a position to influence the conduct of the offender; or

(b) the other partner or person, being in a position to influence the conduct of the offender, took reasonable steps and exercised due diligence to prevent the conduct.

Note for subsection (2)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

(3) This section does not affect the liability of the offender.

(4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.

(5) This section does not apply if the offender would have a defence to a prosecution for the offence.

(6) In this section:

partnership does not include an incorporated limited partnership formed under the *Partnership Act*.

104 Offence – managers of unincorporated associations taken to have committed offence of other manager

(1) If a person (the ***offender***) who is concerned with, or takes part in, the management of an unincorporated association commits an offence against a provision of this Act in the course of the activities of the association, each other person who is concerned with, or takes part in, the management of the unincorporated association is:

(a) taken to have committed the offence; and

(b) liable to the same penalty for the offence as an individual.

(2) Subsection (1) does not apply if:

(a) the other person was not in a position to influence the conduct of the offender; or

(b) the other person, being in a position to influence the conduct of the offender, took reasonable steps and exercised due diligence to prevent the conduct.

Note for subsection (2)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

(3) This section does not affect the liability of the offender.

(4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.

(5) This section does not apply if the offender would have a defence to a prosecution for the offence.

105 Giving of notices

A notice required or permitted by this Act to be given to a person may be so given:

(a) by handing it or tendering it to that person; or

(b) by post; or

(c) by leaving it with a person apparently over the age of 16 years at the last-known or usual place of residence or business of the person to whom it is to be given; or

(d) if the address of the person to whom it is to be given is not known – by publishing the notice in the *Gazette*.

106 Approved forms

The CEO may approve forms for this Act.

107 Regulations

The Administrator may make regulations under this Act.

Part 7 Repeals and transitional matters

Division 1 Acts repealed

108 Acts repealed

The Acts specified in Schedule 2 are repealed.

Division 2 Transitional matters for Training and Skills Development Act 2016

109 Definitions

In this Division:

commencement means the commencement of this Act.

repealed Act means the *Northern Territory Employment and Training Act* as in force immediately before the commencement.

110 Continuation of certain things and offices

Despite the repeal effected by section 108:

(a) a registered training agreement in force under the repealed Act immediately before the commencement continues in force as if it were a registered training contract under this Act; and

(b) a training schedule, for a registered training agreement, in force under the repealed Act immediately before the commencement continues in force as if it were a training plan under this Act; and

(c) an approved apprenticeship in existence under the repealed Act immediately before the commencement continues in existence:

(i) if the qualification specified in the registered training agreement is a nationally recognised qualification that may be attained through being trained in an apprenticeship — as if it were an approved apprenticeship under this Act; and

(ii) in any other case — as if it were an approved traineeship under this Act; and

(d) an approval in force under section 45(1) of the repealed Act immediately before the commencement continues in force as if it were an approval under section 36(1) of this Act; and

(e) an employer who, immediately before the commencement, was an approved employer under section 47 of the repealed Act is taken to be an approved employer under this Act; and

(f) a probationary period of a training agreement in operation under the repealed Act immediately before the commencement continues as if it were a probationary period of a training contract under this Act; and

(g) a person who, immediately before the commencement, was an apprentice under the repealed Act is taken to be an apprentice for this Act if the qualification that the person is seeking to attain is an approved qualification that may be attained through being trained in an apprenticeship; and

(h) a person who, immediately before the commencement, was an apprentice under the repealed Act is taken to be a trainee for this Act if the qualification that the person is seeking to attain is an approved qualification that may be attained through being trained in a traineeship; and

(i) the register established and maintained under section 72 of the repealed Act before the commencement is taken on and after the commencement to be the register required to be established and maintained under section 79 of this Act; and

(j) an application for registration of a training agreement under the repealed Act that, immediately before the commencement, had not been determined under that Act is taken to be an application for registration of a training contract under this Act; and

(k) a person who, immediately before the commencement, was an authorised officer appointed under section 43 of the repealed Act is taken to be an authorised officer under this Act; and

(l) a suspension of a training agreement under section 60(1) of the repealed Act in force immediately before the commencement remains in force as if it were a suspension of a training contract under section 63(1) of this Act;

(m) an application made to the Appeals and Review Tribunal under the repealed Act before the commencement that was not determined before the commencement may continue to be determined by that Tribunal on and after the commencement as if the repealed Act had not been repealed.

111 Offences – before and after commencement

(1) This Act applies only in relation to offences committed after the commencement.

(2) The repealed Act continues to apply in relation to offences committed before the commencement.

(3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

Schedule 1 Reviewable decisions

section 88

Reviewable decision	Affected person
A decision under section 38(3) to refuse to grant approval to employ an apprentice or a trainee	The person who applied for approval
A decision under section 38(3) to impose a condition on the grant of approval to employ an apprentice or a trainee	The person who applied for approval
A decision under section 39(1)(a) to refuse to vary or revoke an approval	The employer who applied for the variation or revocation
A decision under section 39(1)(b) to vary or revoke an approval	The employer who is the subject of the approval that is varied or revoked
A decision under section 40 to declare an employer to be a prohibited employer	The employer who is the subject of the declaration
A decision under section 43 not to revoke a declaration	The employer who applied for revocation
A decision under section 43 to partly revoke a declaration	The employer who applied for revocation
A decision under section 50(1) to refuse to register a training contract	The employer who submitted the contract for registration
A decision under section 50(1) to impose a condition on the registration of a training contract	The employer who submitted the contract for registration
A decision under section 52(1) to cancel the registration of a training contract	Each party to the contract
A decision under section 57 to refuse to approve an RTO	The RTO that applied for approval
A decision under section 57 to impose a condition on the approval of an RTO	The RTO that applied for approval
A decision under section 59(1)(a) to refuse to vary or revoke an approval	The approved RTO
A decision under section 59(1)(b) to vary or revoke an approval	The approved RTO

Reviewable decision	Affected person
A decision under section 63(1) to suspend the operation of a registered training contract	Each party to the contract
A decision under section 64(2) to refuse to approve an application for the assignment of a registered training contract	Each party to the contract
A decision under section 64(2) to impose a condition on the approval of an application for the assignment of a registered training contract	Each party to the contract
A decision to make a declaration under section 65(3)	The employer to whom the registered training contract is assigned
A decision under section 68(2) made in resolving, or attempting to resolve, a dispute between the parties to a registered training contract	Each party to the contract
A decision under section 76(1) to require the employer to keep records	The employer to whom the requirement applies
A decision under section 77(1) to require the employer to provide copies of records	The employer to whom the requirement applies

Schedule 2 Repealed Acts

section 108

Northern Territory Employment and Training Act	Act No. 51 of 1999
Northern Territory Employment and Training Authority Amendment Act 2002	Act No. 46 of 2002
Northern Territory Employment and Training Amendment Act 2004	Act No. 42 of 2004

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Training and Skills Development Act 2016* (Act No. 25, 2016)**

Assent date	29 June 2016
Commenced	4 July 2016 (*Gaz* S61, 4 July 2016)

***Training and Skills Development Amendment Act 2018* (Act No. 26, 2018)**

Assent date	22 November 2018
Commenced	23 November 2018 (s 2)

3 LIST OF AMENDMENTS

s 4	amd No. 26, 2018, s 4
pt 2	
div 1 hdg	rep No. 26, 2018, s 5
ss 9 – 10	rep No. 26, 2018, s 5
pt 2	
div 2 hdg	rep No. 26, 2018, s 5
ss 11 – 28	rep No. 26, 2018, s 5
pt 2	
div 3 hdg	rep No. 26, 2018, s 5
s 29	amd No. 26, 2018, s 6
s 98	amd No. 26, 2018, s 7
pt 8 hdg	exp No. 25, 2016, s 113
ss 112 – 113	exp No. 25, 2016, s 113
sch 3	exp No. 25, 2016, s 113