

NORTHERN TERRITORY OF AUSTRALIA  
CHARLES DARWIN UNIVERSITY (STUDENT CONDUCT) BY-LAWS

As in force at 17 May 2007

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## NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the By-laws as in force at 17 May 2007. Any amendments that commence after that date are not included.

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### CHARLES DARWIN UNIVERSITY (STUDENT CONDUCT) BY-LAWS

#### By-laws under the *Charles Darwin University Act*

#### 1. Citation

These By-laws may be cited as the *Charles Darwin University (Student Conduct) By-laws*.

#### 2. Definitions

(1) In these By-laws, unless the contrary intention appears –

"Appeals Committee" means an Appeals Committee appointed under by-law 14(4);

"appropriate officer", in relation to a charge of misconduct, has the meaning given by by-law 6(1);

"Dean" means the head of a faculty of the University, and includes any person for the time being acting in or performing the duties of the office of head of faculty;

"Director Support and Equity Services" includes any person for the time being acting in or performing the duties of the Director Support and Equity Services and any officer of the University for the time being authorised by the Vice-Chancellor in writing to perform the role and functions of the Director Support and Equity Services under these By-laws;

"Disciplinary Board" means a Disciplinary Board constituted under by-law 11;

"examination" means the sitting of a set paper under supervision, and does not include any other method of academic assessment;

"misconduct" has the meaning given by by-law 3;

"senior officer" means the Vice-Chancellor, a Deputy Vice-Chancellor, a Pro-Vice Chancellor, an Executive Director, a Dean, a Director \ any person acting as an examination supervisor, and any person appointed by the Vice-Chancellor in writing to be a senior officer for the purposes of these By-laws;

"teaching activity" means any lecture, tutorial, seminar, demonstration, class or similar activity, whether or not one that students are required to attend, and any musical, dramatic or other artistic performance or production;

"University premises" includes any premises for the time being used for the purposes, or under the auspices, of the University.

Where in these By-laws, a person holding or occupying a particular designation, office or position is mentioned or referred to in general or specific terms, the mention or reference shall be read as including a reference to all persons who at any time for the time being hold or occupy or perform the duties of that designation, office or position.

### **3. Meaning of misconduct**

(1) In these By-laws, "misconduct" means conduct on the part of a student which impairs the reasonable freedom of other persons to pursue their studies, researches, duties or lawful activities in the University or upon University premises, or to participate in the life of the University, or which is otherwise detrimental to the proper order or good conduct of the University or is adverse to its academic standing.

(2) Without limiting the generality of clause (1), a student is guilty of misconduct if the student –

- (a) wilfully disrupts or obstructs any teaching activity, examination, official meeting or other proceeding of the University;
- (b) wilfully obstructs, or attempts to obstruct, any member of the staff of the University in the performance of the member's duties;
- (c) enters any part of the University premises to which the student knows, or ought reasonably to know, that entry is prohibited or, in the case of a part to which the student knows or ought reasonably to know that entry is allowed only with authority, enters or remains on it without authority;
- (d) unlawfully assaults, or attempts to assault, any person on University premises;

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- (e) wilfully damages or wrongly deals with any property of the University, or the property within University premises of any person;
- (f) cheats, or acts dishonestly in any other way, or assists any other student to cheat or so to act, or attempts to do any of those things, at or in connection with any examination, test, assignment or other means of academic assessment conducted by or on behalf of the University;
- (g) in an attempt to gain academic credit, plagiarizes the work of another;
- (h) without lawful authority, obtains access to or alters, or attempts to gain access to or to alter, any document or record kept by the University;
- (i) knowingly makes a false representation with respect to a matter which relates to the student as a student;
- (j) without lawful authority, discloses to any person any information relating to the University or its affairs which is of a confidential nature and which the student knows, or ought reasonably to know, to be of such a nature;
- (k) disobeys a reasonable direction given by a senior officer;
- (l) fails to disclose his or her name and address, or to produce evidence of identity, where required to do so by an officer of the University who –
  - (i) is making in the course of duty an enquiry or investigation to which the identity of the student is relevant; or
  - (ii) requires to know the student's identity for the purposes of a report to be made to a superior officer.

(3) For the purposes of clause (2)(g), a person plagiarizes the work of another if that person presents the thoughts or words of the other as being his or her own, and the word for word reproduction of a written passage of more than insignificant length, or the paraphrasing of such a passage, is evidence of plagiarism unless the source of the material is acknowledged.

#### **4. Summary powers relating to misconduct**

(1) A senior officer to whom it appears that a student is guilty of misconduct may exclude the student from the University premises or any part or parts thereof for a period not exceeding 24 hours.

- (2) Where it appears to –
  - (a) a senior officer; or
  - (b) a person (whether or not a member of the staff of the University) conducting a teaching activity on behalf of the University, that a student is guilty of misconduct, the officer or person in question may exclude the student from a teaching activity or (as the case may be) that teaching activity for the duration of the activity.

(3) A student shall not be excluded under clause (1) from any examination unless the officer concerned considers exclusion to be necessary in the interests of the other candidates.

(4) The fact of a student's exclusion under this by-law shall be reported to the, Director, Support & Equity Services who shall note it in a book to be kept for that purpose, but shall not, save so far as it is an exclusion from an examination, be entered on any formal record kept by the University with respect to the student.

## **5. Charges of misconduct**

(1) A senior officer may charge a student with misconduct, acting either on the officer's own initiative or on the complaint in writing of a third person, but the officer shall not be obliged to prefer a charge in the latter case, and shall in every case first give the student an opportunity of making any representations the student may wish.

- (2) A charge shall be –
  - (a) in writing, specifying the time and place of the alleged misconduct, and giving particulars of it;
  - (b) signed by the officer making it, and dated; and
  - (c) lodged with the Director, Support & Equity Services.

(3) The fact that a charge has been preferred against a student shall not be entered on any formal record kept by the University with respect to the student until the charge has been finally disposed of in accordance with these By-laws, and then only if it results in the imposition of a penalty on the student.

## **6. Charges to be dealt with by appropriate officer or by Disciplinary Board**

(1) For the purposes of these By-laws, the appropriate officer in relation to a charge of misconduct under by-law 5 is a person, other than the person making the charge, appointed by the Vice Chancellor for the purposes of deciding in relation to a charge under this by-law.

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- (2) The appropriate officer shall decide in relation to a charge whether –
- (a) to deal with the charge in person, in which case he or she shall, unless the charge is admitted, hold an inquiry into it in accordance with by-law 7; or
  - (b) to refer the charge to the Vice-Chancellor for hearing by a Disciplinary Board, and shall give the student notice in writing of the decision, together with a copy of the charge.
- (3) Where the appropriate officer decides to deal with the charge in person, the notice required by clause (2) shall –
- (a) invite the student to state in writing whether he or she admits or denies the charge; and
  - (b) inform the student that, unless the student has by then admitted the charge, the appropriate officer will hold an inquiry into it on a date specified in the notice, being a date not less than six clear days after that on which the notice is given, and at a time and a place also so specified.
- (4) Where the appropriate officer considers it desirable to do so in the circumstances of a particular case, the appropriate officer may by his or her notice under clause (2) –
- (a) suspend the student from attending all, or any specified, teaching activities or (additionally or alternatively) from using all, or any specified, University facilities; or
  - (b) exclude the student from the University premises or any specified part or parts thereof.
- (5) A suspension or exclusion imposed by virtue of clause (4) shall be for such period as is specified in the notice, being –
- (a) in a case where the appropriate officer proposes to deal with the charge in person – a period not exceeding seven days beginning with the date of the notice; and
  - (b) in a case where the appropriate officer proposes to refer the charge for hearing by a Disciplinary Board – a period not exceeding 28 days beginning with the date of the notice.

**7. Inquiry into charge by appropriate officer**

(1) The procedure to be followed at an inquiry held into a charge of misconduct pursuant to by-law 6(2)(a) shall be determined by the appropriate officer.

(2) Notwithstanding clause (1), the student charged is entitled to be heard at the inquiry and, if he or she so wishes, to be represented at it by any other person except a legal practitioner.

(3) Where a student fails to appear at an inquiry, the appropriate officer may at his or her discretion either proceed with the inquiry in the student's absence or adjourn it.

**8. Penalties available to appropriate officer**

(1) Where a student has admitted a charge of misconduct, or the appropriate officer finds a charge proved at an inquiry held pursuant to by-law 6(2)(a), the appropriate officer may –

- (a) with the consent of the student, require the student to undergo counselling of a specified nature and extent; or
- (b) suspend the student from attending all, or any specified, teaching activities or (additionally or alternatively) from using all, or any specified, University facilities; or
- (c) exclude the student from the University premises or any specified part or parts thereof; or
- (d) fine the student an amount not exceeding 5 penalty units, or may, if such appears to the officer appropriate, impose more than one such penalty.

(2) Subject to clause (3), a suspension or exclusion imposed by the appropriate officer under this by-law shall begin on the date on which it is imposed, and shall be for a period not exceeding seven days.

**9. Recording and notification of penalties, &c.**

(1) An appropriate officer shall keep a written record of all charges of misconduct that he or she has dealt with in person, showing in relation to each whether it was admitted by the student or was the subject of an inquiry held pursuant to by-law 6(2)(a).

(2) In the case of a charge which was admitted, the record shall state what (if any) penalty or penalties the appropriate officer imposed.

(3) In the case of a charge which was the subject of an inquiry, the record shall state both the appropriate officer's findings at the inquiry and any penalty or penalties that he or she imposed, and shall also include a brief note (made at the time of the inquiry either by the appropriate officer or by a member of the administrative staff of the University appointed by the appropriate officer for the purpose) of any evidence given at the inquiry.

(4) The appropriate officer shall give written notice to the student concerned of his or her findings at any inquiry into a charge of misconduct, and of any penalty or penalties imposed in respect of any charge of misconduct (whether or not it was the subject of an inquiry).

**10. Review by Vice-Chancellor of charge dealt with by appropriate officer**

(1) A student aggrieved by any finding of an appropriate officer at any inquiry held pursuant to by-law 6(2)(a), or by any penalty or penalties imposed by an appropriate officer in respect of a charge of misconduct (including a charge admitted by the student), may within a period of 14 days beginning with the date on which the notice required by by-law 9(4) is given to him or her apply to the Vice-Chancellor for a review, on grounds stated in the application, of the finding, of the penalty or penalties, or of both.

(2) The powers of the Vice-Chancellor on an application under clause (1) are (as may be appropriate to the nature of the review sought, and subject to clause (3)) –

- (a) in relation to a finding – to confirm it or set it aside; and
- (b) in relation to a penalty – to confirm it or set it aside, to vary it (but not so as to make it one that the appropriate officer could not have imposed) or to substitute for it any other penalty that the appropriate officer could have imposed.

(3) Where a student has applied under clause (1) for a review of a finding the Vice-Chancellor may, instead of reviewing the finding and either confirming it or setting it aside under clause (2)(a), decide that the charge shall be heard afresh by a Disciplinary Board.

(4) The Vice-Chancellor shall give the student written notice of his or her decision on an application under clause (1), and, where the decision is to refer the charge to a Disciplinary Board, may by the notice impose on the student any such suspension or exclusion as is mentioned in by-law 6(4) for a specified period not exceeding 28 days beginning with the date of the notice.

## **11. Disciplinary Boards: constitution**

(1) Where an appropriate officer has under by-law 6(2)(b) referred a charge of misconduct to the Vice-Chancellor for hearing by a Disciplinary Board, or the Vice-Chancellor has under by-law 10(3) decided that a charge be so heard, the Vice-Chancellor shall, subject to clause (2) –

- (a) constitute a Disciplinary Board in accordance with the following provisions of this by-law; and
- (b) lodge the charge with the Chair of the Board.

(2) If it appears to the Vice-Chancellor appropriate that a charge be heard by a Disciplinary Board already constituted under this by-law for the hearing of some other charge, the Vice-Chancellor may, instead of complying with clause (1) lodge the charge with the Chair of that Board.

(3) A Disciplinary Board shall consist of –

- (a) a Chair appointed by the Vice-Chancellor, being a lawyer;
- (b) a member selected by the Vice-Chancellor at random from a panel of five full-time members of the teaching staff of the University nominated for the purpose jointly by the Deputy Vice-Chancellor Teaching and Learning and the Chair of the Academic Board; and
- (c) a member selected by the Vice-Chancellor at random from a list of five students submitted for the purpose by the President of the student association established under section 22 of the Act.

(4) Where a person selected by the Vice-Chancellor under clause (3)(b) or (c) is unable or unwilling to act as a member of the Board, or, in the opinion of the Chair of the Board, ought not to sit as a member by reason of their involvement in any matter, the Vice-Chancellor shall select at random a substitute for that person from the appropriate panel or list.

(5) The Director, Support & Equity Services or a member of the administrative staff of the University appointed by the Vice Chancellor, shall act as Secretary to a Disciplinary Board.

## **12. Disciplinary Boards: hearings**

(1) A Disciplinary Board shall begin hearing a charge against a student not later than 28 days after the date on which notice that the charge is to be heard by such a Board is given to the student under by-law 6(2) or 10(4).

(2) The Secretary to the Board shall give the student not less than 14 clear days' notice in writing of the date, time and place of the hearing, and the notice shall in addition inform the student of the provisions of by-law 16(2)

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and (3) with respect to the rights of representation at the hearing of both the student and the University.

(3) Board may not deal with more than one charge at the same hearing, whether a charge against the same student or against another or others, except in the case of charges which –

- (a) arise out of the same matter; or
- (b) relate to conduct which –
  - (i) constitutes one instance of a series of the same or a similar character;
  - (ii) was committed in the furtherance of a common objective; or
  - (iii) occurred in the course of some group activity.

(4) Any point of law arising in the course of a hearing shall be decided by the Chair of the Board.

(5) The decisions of a Board shall be by a majority vote, the Chair having a primary vote only.

(6) Where after the hearing of a charge has begun any member of a Board becomes unable to be present throughout the rest of the hearing, the Chair of the Board or its Secretary shall inform the Vice-Chancellor, who shall constitute another Board in accordance with the provisions of by-law 11 and transfer the hearing of the charge to the new Board.

(7) Where clause (6) applies, the new Board shall begin to hear the charge as soon as may be, and clause (1) shall not apply.

(8) The evidence given before a Board shall be recorded, and the records retained by the Secretary to the Board for transcription in the event of the lodging of an appeal against any decision of the Board, failing which the Secretary to the Board may cause them to be erased.

(9) Where it appears to the Secretary to the Board that a Disciplinary Board has not determined, or will not determine, a student's appeal before the end of the student's suspension under by-law 6(2) or 10(4), the Secretary to the Board may, by notice in writing to the student, suspend him or her for a further period of not more than 7 days.

**13. Disciplinary Boards: penalties**

(1) Where a Student Discipline Board finds a charge against a student proved, it may –

- (a) caution or reprimand the student;
- (b) suspend the student for a specified period from attending all, or any specified, teaching activities or (additionally or alternatively) from using all, or any specified, University facilities;
- (c) suspend the student from attending any specified examination or examinations;
- (d) exclude the student for a specified period from the University premises or any specified part or parts thereof;
- (e) fine the student an amount not exceeding 10 penalty units; or
- (f) recommend to the Council that the student be expelled from the University, or that a degree or other award be withheld from the student, or may where that seems appropriate impose or recommend any two or more of those penalties.

(2) Subject to clause (4), a penalty imposed by a Disciplinary Board shall take effect on the date on which it is imposed.

(3) A Disciplinary Board may suspend any penalty that it imposes on such terms and conditions (including undertakings by the student) as it thinks fit.

(4) Where a Disciplinary Board recommends to the Council that a student be expelled from the University, the Council shall not give effect to the recommendation until the time for giving notice of appeal under by-law 14(1) has passed without such a notice having been given or (if such a notice has been given) the recommendation has been confirmed by an Appeals Committee, but all the rights and privileges of the student as such shall be suspended until –

- (a) the Council gives effect to the recommendation, or determines not to do so; or
- (b) an Appeals Committee sets the recommendation aside or substitutes for it some other penalty.

(5) The findings of a Disciplinary Board on a charge, and any penalty or penalties it imposes or recommends, shall be stated in writing signed by the Chair of the Board, and the Secretary to the Board shall give a copy of the statement to the Vice-Chancellor and the student.

**14. Rights of appeal to Appeals Committee**

(1) Where a charge of misconduct has been heard by a Disciplinary Board, either –

- (a) the student; or
- (b) the Vice-Chancellor acting on behalf of the University,

may within seven days after the date on which he or she is given a copy of the statement referred to in by-law 13(5) give to the Secretary to the Board written notice of appeal against any finding of, or penalty imposed or recommended by, the Board or against any such finding and any such penalty.

(2) On receiving a notice of appeal under clause (1), the Secretary to the Board shall notify the Vice-Chancellor or, as the case may require, the student in question that an appeal has been lodged, and shall furnish to both parties transcripts of the evidence before the Board.

(3) An appellant shall, within seven days after the date on which he or she is given the transcripts of evidence, give notice in writing to the Secretary to the Board and the respondent of the grounds of the appeal.

(4) On receiving the notice required by clause (3), the Secretary to the Board shall report the matter to the Chancellor, who shall appoint an Appeals Committee in accordance with the following provisions of this by-law, and the appeal shall stand referred to that Committee.

- (5) An Appeals Committee shall consist of –
  - (a) a Chair, who shall be the President for the time being of the Northern Territory Bar Association, or a person nominated in writing by the President;
  - (b) a student of the University selected by the Chancellor from a list of five students submitted for the purpose by the President of the student association established under section 22 of the Act;
  - (c) a member of the Council selected by the Chancellor; and
  - (d) two other persons, whether or not members of the Council, selected by the Chancellor.

(6) The Chancellor shall not appoint to an Appeals Committee any person who was a member of the Disciplinary Board, or any other person who, in the Chancellor's opinion, should be debarred from participating in the appeal by reason of his or her involvement in any matter.

(7) The Director, Support & Equity Services, or a member of the administrative staff of the University appointed by the Vice Chancellor shall act as Secretary to an Appeals Committee.

**15. Appeals Committee: hearings and powers**

(1) An Appeals Committee shall begin hearing an appeal not later than 28 days after the date on which the appellant gives notice of the grounds of his/her appeal pursuant to by-law 14(3).

(2) The Secretary to the Appeals Committee shall give to each of the parties to the appeal not less than seven clear days' notice of the date, time and place of the hearing, and the notice given to the student shall inform the student of the provisions of by-law 16(2) with respect to the rights of representation at the appeal of both the student and the University.

(3) An Appeals Committee shall on an appeal rely on the transcripts of the evidence before the Disciplinary Board, but may admit new evidence not previously available.

(4) Any point of law arising on an appeal shall be decided by the Chair of the Appeals Committee.

(5) The decisions of an Appeals Committee shall be by majority vote, the Chair having a primary vote only.

(6) Where after the hearing of an appeal has begun any member of an Appeals Committee becomes unable to be present throughout the rest of the hearing, the Chair of the Committee or its secretary shall inform the Chancellor, who shall appoint another Appeals Committee in accordance with the provisions of by-law 14 and transfer the hearing of the appeal to the new Committee.

(7) Where clause (6) applies, the new Appeals Committee shall begin hearing the appeal as soon as may be, and clause (1) shall not apply.

(8) The powers of an Appeals Committee on an appeal are (as may be appropriate to the nature of the appeal) to –

- (a) confirm or set aside any finding of the Disciplinary Board; and
- (b) confirm or set aside any penalty imposed or recommended by the Board, vary any such penalty (but not so as to make it one that the Board could not have imposed or recommended) or substitute for one penalty any other penalty that the Board could have imposed or recommended.

(9) The Secretary to an Appeals Committee shall give written notice of the Committee's decision on an appeal to the parties thereto, and where an Appeals Committee has substituted for a penalty imposed or recommended by a

Disciplinary Board a recommendation to the Council that a student be expelled from the University, all the rights and privileges of the student as such shall be suspended until the Council gives effect to the recommendation or determines not to do so.

**16. Procedure of Boards and Committees**

(1) The procedure of a Disciplinary Board or Appeals Committee, including the order in which evidence may be called and addresses heard, shall be at the discretion of the Board or Committee.

(2) Subject to clause (3) –

(a) a student shall be entitled to be represented before a Disciplinary Board or Appeals Committee by a legal practitioner, or a member of the staff of the University, or another student; and

(b) the University shall be entitled to be represented before a Board or Committee by a legal practitioner or a member of the University staff.

(3) In the case of a hearing by a Disciplinary Board –

(a) the right of a student to be represented by a legal practitioner shall be exercisable only if he or she gives notice to the Chair of the Board that he or she intends to be legally represented not less than seven clear days before the date of the hearing; and

(b) the University may be represented by a legal practitioner only if the student is so represented.

(4) During a hearing by a Disciplinary Board or an Appeals Committee –

(a) the student shall be entitled –

(i) subject to clause (6), to be present with his or her representative throughout the hearing except when the Chair and members wish to confer privately among themselves or to consider their decision; and

(ii) either in person or by his or her representative to call and examine witnesses, to cross-examine other witnesses, and to address the Board or Committee; and

(b) the University's representative may call and examine witnesses, cross-examine witnesses called by the student or the student's representative, and address the Board or Committee.

(5) Hearings of a Disciplinary Board or Appeals Committee shall be in private.

(6) A Disciplinary Board or Appeals Committee shall have full authority to keep order at its hearings, and may order the removal therefrom for unruly conduct of any person, including a student in respect of whom the hearing is taking place or such a student's representative.

(7) Where a student fails to appear at a hearing of which notice has been duly given, a Disciplinary Board or Appeals Committee may at its discretion either proceed with the hearing in the student's absence or adjourn it.

#### **17. Withholding awards for misconduct**

(1) Subject to clause (2), where it has been decided by an appropriate officer under by-law 6(2)(b) or the Vice-Chancellor under by-law 10(3) that a charge of misconduct preferred against a student is to be heard by a Disciplinary Board, no degree or other award shall be conferred on or granted to the student until –

- (a) the charge has been so heard;
- (b) any appeal has been disposed of or the time for giving notice of appeal has passed without any notice having been given; and
- (c) no penalty imposed in respect of the charge remains outstanding.

(2) Notwithstanding clause (1), the Council may, if it thinks fit, authorise the conferring or granting of a degree or other award on or to any student who is subject only to a suspended penalty.

#### **18. Consequence of expulsion from University**

A student who has been expelled from the University shall not be re-enrolled as a student except with the authority of the Council.

#### **19. Costs of legal representation**

Where a student has been represented before a Disciplinary Board or an Appeals Committee by a legal practitioner, the University shall, if the Board or Committee in its discretion (but having regard to any legal aid or assistance received by or available to the student) so determines, pay the student such amount as is specified by the Board or Committee towards the cost of that representation.

#### **20. Giving of notices, &c.**

References in these By-laws to the giving of a notice or other document to any person are references to its being either given to him or her in person or

posted to him or her by registered post addressed to the last address known to the University as his or her place of residence, and references to the date on which notice is given shall be construed accordingly.

**21. Repeal**

The by-laws in force immediately prior to the date of commencement of these by-laws and known as the *Northern Territory University (Student Conduct) By-laws* are repealed on and from the date of commencement of these by-laws.

## ENDNOTES

### 1. KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>bl</b> = by-law	<b>om</b> = omitted
<b>ch</b> = Chapter	<b>pt</b> = Part
<b>div</b> = Division	<b>r</b> = regulation/rule
<b>exp</b> = expires/expired	<b>renum</b> = renumbered
<b>f</b> = forms	<b>rep</b> = repealed
<b>Gaz</b> = <i>Gazette</i>	<b>s</b> = section
<b>hdg</b> = heading	<b>sch</b> = Schedule
<b>ins</b> = inserted	<b>sdiv</b> = Subdivision
<b>lt</b> = long title	<b>SL</b> = Subordinate Legislation
<b>N/C</b> = not commenced	<b>sub</b> = substituted

### 2. LIST OF LEGISLATION

*Charles Darwin University (Student Conduct) By-laws*

Notified	19 July 2006
Commenced	19 July 2006

*Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)*

Assent date	17 May 2007
Commenced	s 10: N/C; Remainder: 17 May 2007

### 3. LIST OF AMENDMENTS

bl 11                      amd Act No. 7, 2007, s 16