

AUSTRALIAN CAPITAL TERRITORY

A.C.T. Institute of Technical and Further Education Ordinance 1987

No. 71 of 1987

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AUSTRALIAN CAPITAL TERRITORY

A.C.T. Institute of Technical and Further Education Ordinance 1987

No. 71 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 December 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

R. KELLY
Minister of State for Defence Science and personnel

An Ordinance to establish an Institute of Technical and Further Education in the Australian Capital Territory

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *A.C.T. Institute of Technical and Further Education Ordinance 1987*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister by notice in the *Gazette*.

Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—

“appoint” includes re-appoint;

“Director” means the Director of the Institute;

“Institute” means the A.C.T. Institute of Technical and Further Education;

“joint venture” means an undertaking carried on by 2 or more persons in common otherwise than as partners;

“para-professional training” means training which leads to the award of an Associate Diploma;

“securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents;

“share” means a share in the share capital of a corporation, and includes stock;

“staff”, in relation to the Institute, means persons employed by the Institute under section 19;

“technical and further education” means education provided by way of a course of instruction or training that is, or that is preparatory to, a course of a kind relevant to a trade, technical or other skilled occupation or that otherwise meets the educational needs of individuals and includes para-professional and professional training.

(2) The question whether a company is a subsidiary of the Institute shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Companies Act 1981*.

PART II—A.C.T. INSTITUTE OF TECHNICAL AND FURTHER EDUCATION**Establishment of Institute**

4. (1) There is established a body known as the A.C.T. Institute of Technical and Further Education.

(2) The Institute—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) The common seal of the Institute shall be kept in such custody as the Institute directs and shall not be used except as authorised by the Institute.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Institute affixed to a document and shall presume that it was duly affixed.

Constitution of Institute

5. (1) At the commencement of this Ordinance, the Institute shall consist of—

- (a) the institution previously known as the Canberra College of Technical and Further Education;
- (b) the institution previously known as the Bruce College of Technical and Further Education;
- (c) the institution previously known as the Woden College of Technical and Further Education; and
- (d) any other department, institution, authority, or part of any other department, institution or authority declared by the Minister to be part of the Institute at the commencement of this Ordinance.

(2) At any other time, the Institute shall consist of the institutions and other departments and authorities in subsection (1) and any other fields of technical and further education as the Director, with the approval of the Minister, determines or the Minister requires.

Functions of Institute

6. (1) The functions of the Institute are—

- (a) to conduct, principally in the Territory, an educational institution for the purpose of fostering the achievement of excellence in study in the fields of technical and further education as the Director, with the approval of the Minister, determines or the Minister requires;

- (b) to provide courses and programs, and to use the facilities and resources of the Institute, to advance and develop knowledge and skill in the fields of technical and further education;
- (c) to support industry and commerce, and to assist the development of industry and commerce and the community, in the Territory;
- (d) to promote the development of community awareness and appreciation of technical and further education;
- (e) to confer awards;
- (f) to consult and co-operate with other institutions, and with persons, associations, organisations and authorities, in relation to the provision of education in technical and further education;
- (g) to make suitable financial arrangements with industry and commerce for the purposes of any of the foregoing; and
- (h) to do anything incidental to any of the foregoing.

(2) The functions referred to in paragraphs (1) (b), (c), (f) and (g), and anything incidental to those functions, may be performed within or outside Australia.

(3) The Institute shall perform its functions in accordance with any directions given by the Minister.

(4) Where the Minister gives a direction under subsection (3), the direction shall be notified in the *Gazette* and the Minister shall cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given.

Powers of Institute

7. (1) The Institute has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may—

- (a) subject to subsection (2), enter into contracts;
- (b) erect buildings and structures and carry out works;
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Institute;

- (d) accept gifts, grants, devises and bequests made to the Institute, whether on trust or otherwise, and act as trustee of moneys or other property vested in the Institute upon trust;
- (e) provide scholarships and other like benefits;
- (f) make charges for work done, and services rendered, by it;
- (g) engage consultants;
- (h) provide consultative services, including such services to the Commonwealth;
- (j) form, and participate in the formation of, companies;
- (k) enter into partnership;
- (l) participate in joint ventures;
- (m) provide services, facilities or resources to any company it has formed or participated in the formation of, any partnership it has entered into or any joint venture it has participated in;
- (n) appoint agents and attorneys and act as an agent for other persons;
- (p) obtain commercial sponsorship for the Institute;
- (q) establish residential facilities either by itself or in association with other bodies;
- (r) establish and maintain museum, art, library and other collections either by itself or in association with other bodies; and
- (s) do anything incidental to any of its powers.

(2) The Institute shall not enter into a contract for the expenditure of an amount exceeding \$100,000 without the approval of the Minister.

(3) The powers of the Institute may be exercised within or outside Australia.

(4) The purpose of the exercise of the powers under paragraphs (1) (j), (k) and (l) shall be to raise profits to be applied exclusively for the use of the Institute.

Limitations on formation of companies etc.

8. (1) The Institute shall not, without the written approval of the Minister—

- (a) subscribe for or purchase shares in, or debentures or other securities of, a company; or
 - (b) form, or participate in the formation of, a company that would, upon its formation, be a subsidiary of the Institute.
- (2) An approval under subsection (1)—
- (a) may be of general application or may relate to a particular company or proposed company; and
 - (b) may be given subject to specified conditions and restrictions.
- (3) Subject to subsection (4), where the Institute subscribes for or purchases shares in, or debentures or other securities of, a company or where the Institute participates in, forms or is interested in a company, the Minister shall—
- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the subscription or purchase or the participation, formation or interest; and
 - (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after—
 - (i) subject to subparagraph (ii), the subscription or purchase or the participation, formation or interest takes place; or
 - (ii) if the Minister is of the opinion that the disclosure of the subscription or purchase or the participation, formation or interest would adversely affect the commercial interests of the Institute, the Minister ceases to be of that opinion.
- (4) Where the Institute holds a controlling interest in a company, the Institute shall endeavour to ensure that the audit arrangements for the company are acceptable to the auditors of the Institute and that the company does not do anything that the Institute itself is not empowered to do.
- (5) Without limiting the generality of subsection (4), the Institute shall endeavour to ensure that a company in which it holds a controlling interest does not—
- (a) borrow money otherwise than from the Commonwealth; or
 - (b) raise money otherwise than by borrowing;
- except—

- (c) with the written approval of the Treasurer; and
- (d) on terms and conditions that are specified in, or consistent with, the approval.

(6) Subsection (5) applies to a borrowing or raising of money whether the money is borrowed or raised by dealing in securities or otherwise, and whether or not the money is borrowed or raised, in whole or in part, in a currency other than Australian currency.

(7) An approval may be given under subsection (5) in relation to a particular transaction or class of transactions.

(8) For the purposes of subsection (5)—

- (a) the issue by a company of an instrument acknowledging a debt in consideration of the payment or deposit of money or of the provision of credit; or
- (b) the obtaining of credit by the company;

shall, to the extent of the amount of that money or of that credit, as the case may be, be deemed to be a borrowing by that company.

(9) Paragraph 5 (b) does not apply to a raising of money where that money is raised by way of donation or gift or by bona fide payment for services rendered.

Limitations of formation of partnerships

9. (1) The Institute shall not, without the written approval of the Minister, enter into partnership with another person.

(2) An approval under subsection (1)—

- (a) may be of general application or may relate to a particular person or proposed partnership; or
- (b) may be given subject to specified conditions and restrictions.

(3) Subject to subsection (4), where the Institute enters into partnership with another person, the Minister shall—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the partnership; and
- (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after—

- (i) subject to subparagraph (ii), the partnership is entered into; or
- (ii) if the Minister is of the opinion that the disclosure of the partnership would adversely affect the commercial interests of the Institute, the Minister ceases to be of that opinion.

(4) Where the Institute is able to control the things done by a partnership of which it is a member, the Institute shall endeavour to ensure that the audit arrangements for the partnership are acceptable to the auditors of the Institute and that the partnership does not do anything that the Institute itself is not empowered to do.

Limitations on participation in joint ventures

10. (1) The Institute shall not, without the written approval of the Minister, participate in a joint venture.

(2) An approval under subsection (1)—

- (a) may be of general application or may relate to a particular proposed joint venture; or
- (b) may be given subject to specified conditions and restrictions.

(3) Subject to subsection (4), where the Institute enters into an agreement for a joint venture, the Minister shall—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the joint venture; and
- (b) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after—
 - (i) subject to subparagraph (ii), the agreement is entered into; or
 - (ii) if the Minister is of the opinion that the disclosure of the joint venture would adversely affect the commercial interests of the Institute, the Minister ceases to be of that opinion.

(4) Where the Institute is able to control the things done by a joint venture of which it is a participant, the Institute shall endeavour to ensure that the audit arrangements for the joint venture are acceptable to the auditors of the Institute and that the joint venture does not do anything that the Institute itself is not empowered to do.

PART III—DIRECTOR, COMMITTEES AND STAFF OF INSTITUTE

Director

11. (1) There shall be a Director of the Institute who shall be appointed by the Minister.

(2) A person who has attained the age of 65 years shall not be appointed as Director, and a person shall not be appointed as Director for a period that extends beyond the day on which the person will attain the age of 65 years.

(3) The appointment of a person as Director shall be on a full-time basis for a specified period not exceeding 5 years.

(4) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Ordinance as are determined by the Minister.

Functions of Director

12. (1) The Director shall manage the affairs of the Institute.

(2) Anything done in the name of, or on behalf of, the Institute by the Director shall be deemed to have been done by the Institute.

Powers of Director

13. (1) The Director has the power to do all things that are necessary or convenient to be done for or in connection with the performance of the Director's functions and, in particular, may make administrative arrangements or give directions to a member of staff or to a student with respect to the following matters—

- (a) the management, good government and discipline of the Institute;
- (b) the custody and use of the common seal;
- (c) the persons who are to constitute the teaching staff of the Institute for the purposes of this Ordinance;
- (d) the persons who are to constitute the non-teaching staff of the Institute for the purposes of this Ordinance;
- (e) the persons who are to constitute the students of the Institute for the purposes of this Ordinance;
- (f) the provision of superannuation or similar benefits for, or in respect of, staff;

- (g) the admission of persons to courses of study or instruction of the Institute or to examinations of the Institute;
- (h) the awards (including honorary awards) that may be conferred by the Institute and the requirements for their conferral;
- (j) the granting by the Institute of scholarships, bursaries and prizes;
- (k) the review of progress of students;
- (l) the provision of loans to any student;
- (m) the provision and management of, and fees or other charges payable for, the use of amenities and services;
- (n) the association or affiliation with the Institute of any authority, corporation, institution, body or person; or
- (p) any other matter authorised by this Ordinance or necessary or convenient for giving effect to this Ordinance.

(2) Subject to the *Audit Act 1901* and any regulations made under that Act, the Director has the power to issue financial and accounting directions to a member of staff.

Remuneration and allowances

14. (1) The Director shall be paid—

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

(2) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

15. The Minister may grant leave of absence to the Director on such terms and conditions as to remuneration or otherwise as are determined by the Minister.

Resignation

16. The Director may resign by delivering to the Minister a signed notice of resignation.

Acting Director

17. (1) The Minister may appoint a person to act as the Director—

- (a) during a vacancy in the office of Director (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of Director;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment under subsection (1) may be expressed to have effect only in such circumstances as are specified by the Minister.

(3) The Minister may—

- (a) determine the terms and conditions of appointment (including remuneration and allowances) of a person acting as Director; and
- (b) terminate such an appointment at any time.

(4) Subject to subsection (2), if the office of Director becomes vacant while a person is acting under paragraph (1) (b), the person may continue to act until—

- (a) the Minister otherwise directs;
- (b) the vacancy is filled; or
- (c) a period of 12 months from the occurrence of the vacancy expires;

whichever first happens.

(5) A person may resign an appointment under this section by delivering to the Minister a signed notice of resignation.

(6) While a person is acting under this section, the person has all the powers, and shall perform all the functions, of the Director.

(7) An act done by or in relation to a person purporting to act under this section is not invalid only because—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Committees

- 18.** The Director may appoint a committee of not more than 5 members—
- (a) to furnish advice to the Director with respect to such matters relating to the functions of the Institute as the Director refers to the committee; or
 - (b) to assist the Director in the performance of such of his or her functions as the Director requires.

Staff

- 19. (1)** The staff of the Institute shall consist of—
- (a) such persons employed by the Director, on behalf of the Institute, as the Director thinks necessary for the purposes of this Ordinance; and
 - (b) persons made available to the Institute under the *Commonwealth Teaching Service Act 1972*.
- (2)** Paragraph (1) (b) shall cease to have effect on such date as is fixed by the Minister by notice in the *Gazette*.

PART IV—FINANCE**Money to be appropriated by Parliament**

- 20. (1)** There is payable to the Institute such money as is appropriated by the Parliament for the purposes of the Institute.
- (2)** The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Institute.

Fees

- 21. (1)** There is payable to the Institute such fees for attendance at courses and programs as the Minister may determine by notice in the *Gazette*.
- (2)** The Director may make a determination in relation to—
- (a) fees the payment of which is voluntary;
 - (b) fees in respect of the provision of an administrative service;
 - (c) fees in respect of the provision to students of amenities or services not of an academic nature;

- (d) fees in respect of an organisation of students or of students and other persons; or
- (e) fees in respect of residential accommodation.

(3) A fee is not payable by a person or class of persons exempted from payment of the fee by a determination of the Minister under subsection (1) or the Director under subsection (2).

Estimates

22. (1) The Institute shall—

- (a) prepare estimates of the receipts and expenditure of the Institute in such form as the Minister directs for—
 - (i) each calendar year; and
 - (ii) any other period specified by the Minister; and
- (b) lodge estimates with the Minister within such time as the Minister directs.

(2) Estimates under subsection (1) shall not include estimates of receipts or expenditure of trust money.

Money of Institute

23. The money of the Institute consists of—

- (a) money paid to the Institute under section 20; and
- (b) any other money, other than trust money, paid to the Institute.

Application of money

24. (1) The money of the Institute shall be applied only—

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Institute in the performance of its functions and the exercise of its powers;
- (b) in payment of any remuneration or allowance payable to any person under this Ordinance; and
- (c) in making any other payments required or permitted to be made by the Institute.

(2) The money of the Institute, other than trust money, shall be expended only in accordance with estimates approved by the Minister.

(3) Money of the Institute not immediately required for the purposes of the Institute may be invested—

- (a) on deposit with the Reserve Bank of Australia or any other bank approved by the Treasurer;
- (b) in securities of the Commonwealth;
- (c) on loan to an authorised dealer;
- (d) in clean bills of exchange; or
- (e) in any other manner approved by the Treasurer.

(4) In subsection (3)—

“authorised dealer” means a corporation that is an authorised dealer in the short-term money market as defined by subregulation 5 (1) of the Banking (Savings Banks) Regulations as amended and in force from time to time under the *Banking Act 1959*;

“clean bill of exchange” means a bill of exchange that—

- (a) has been accepted by a trading bank;
- (b) has been indorsed by a trading bank or trading banks; and
- (c) has not been indorsed by any person other than a trading bank.

Borrowing from the Commonwealth

25. The Minister for Finance may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Institute at such rates of interest, and on such other terms and conditions, as the Minister determines.

Borrowing otherwise than from the Commonwealth

26. (1) The Institute may, with the approval of the Treasurer, borrow money otherwise than from the Commonwealth on terms and conditions that are specified in, or are consistent with, the approval.

(2) An approval under subsection (1) may be in respect of particular borrowings or a class of borrowings.

(3) An approval under subsection (1) shall be in writing.

Dealings with securities

27. (1) The Institute may, with the approval of the Treasurer but not otherwise, deal with securities.

(2) An approval under subsection (1) shall be in writing.

(3) A reference in this section to dealing with securities includes a reference to—

- (a)** creating, executing, entering into, drawing, making, accepting, indorsing, issuing, discounting, selling, purchasing or reselling securities;
- (b)** creating, selling, purchasing or reselling rights or options in respect of securities; and
- (c)** entering into agreements or other arrangements relating to securities.

Security

28. The Institute may give security over the whole or any part of its assets for—

- (a)** the repayment of money borrowed under section 26;
- (b)** the payment of any money (without interest) that the Institute is liable to pay in respect of those borrowings; and
- (c)** the payment of money (including interest) that the Institute is liable to pay in respect of dealings with securities under section 27.

Borrowing not otherwise permitted

29. The Institute shall not borrow or raise any money except in accordance with sections 25, 26 and 27.

Trust money and trust property

30. The Institute—

- (a)** shall pay trust money into an account or accounts referred to in subsection 63J (1) of the *Audit Act 1901* (as that subsection applies to the Institute) containing no money other than trust money;
- (b)** shall apply or deal with trust money and trust property only in accordance with the powers and duties of the Institute as trustee; and
- (c)** may only invest trust money—

- (i) in a manner in which the Institute is authorised to invest the money by the terms of the trust; or
- (ii) in a manner in which trust money may be lawfully invested.

Exemption from taxation

31. (1) Subject to subsection (2), the income, property and transactions of the Institute are not subject to taxation under any law of a State or Territory.

(2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

PART V—MISCELLANEOUS

Delegation by Director

32. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing delegate to any person all or any of the Director's powers and functions under this Ordinance, other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised or performed by the Director.

(3) A delegation does not prevent the exercise of a power or performance of a function by the Director.

Notification of decisions

33. (1) Where the Director makes a decision—

- (a) not to admit a person to a course of study or instruction of the Institute or to an examination of the Institute under paragraph 13 (1) (g); or
- (b) not to confer an award (not including an honorary award) on a person under paragraph 13 (1) (h);

he or she shall, within 28 days of the date of the decision, cause notice to be given to the persons whose interests are affected by the decision, setting out the decision and giving reasons for the decision.

(2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the

Administrative Appeals Tribunal for a review of the decision to which the notice relates; and

- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

(3) The validity of a decision to which a notice under subsection (1) relates shall not be taken to be affected by a failure to comply with subsection (2).

Review by Administrative Appeals Tribunal

34. Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Director—

- (a) refusing to admit a person to a course of study or instruction of the Institute or to an examination of the Institute under paragraph 13 (1) (g); or
- (b) refusing to confer an award (not including an honorary award) on a person under paragraph 13 (1) (h).

Regulations

35. (1) The Governor-General may make regulations, not inconsistent with this Ordinance, prescribing matters—

- (a) required or permitted by this Ordinance to be prescribed by regulations; or
- (b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Ordinance.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may make provisions for and in relation to—

- (a) the use or parking of vehicles on land occupied by the Institute in the Territory, including the authorisation of, and the provision for the effect of, signs and marking;
- (b) the punishment, on summary conviction, by a fine not exceeding \$50, of offences against a regulation made under paragraph (a); or
- (c) the imposition of penalties upon members of staff or students of the Institute for contravention of the Ordinance or any administrative arrangements made or directions given by the Director under section 13.

18 *A.C.T. Institute of Technical and Further Education No. 71, 1987*

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 22 December 1987.