

1995

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Education and Training)

University of Canberra (Transfer) Bill 1995

A BILL

FOR

An Act to amend the *University of Canberra Act 1989* and certain other laws, and to make certain transitional arrangements, consequent upon the transfer of responsibility for the University of Canberra from the Commonwealth to the Territory

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *University of Canberra (Transfer) Act 1995*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

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(2) The remaining provisions commence at the time at which the *University of Canberra Act 1989* of the Commonwealth becomes an enactment by virtue of subsection 34 (2) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

5 Interpretation

3. In this Act, unless the contrary intention appears—

“commencement” means the time at which the provisions of this Act (other than sections 1 and 2) commence;

10 “Principal Act” means the *University of Canberra Act 1989* of the Commonwealth as in force immediately before commencement.

PART II—UNIVERSITY OF CANBERRA ACT 1989

Long title

4. The title of the Principal Act is repealed and the following title substituted:

15 “An Act to establish the University of Canberra”.

Interpretation

5. Section 3 of the Principal Act is amended—

(a) by omitting the definitions of “College”, “College Act” and “commencement”;

20 (b) by omitting the definition of “Vice-Chancellor” and substituting the following definition:

“ ‘Vice-Chancellor’ means the Vice-Chancellor and President of the University of Canberra appointed under section 25.”; and

25 (c) by inserting the following definition:

“ ‘Deputy Chancellor’ means the Deputy Chancellor of the University appointed under section 24A.”.

Insertion

6. After section 6 of the Principal Act the following section is inserted:

30 Values and principles of the University

“6A. The University shall have an objective of implementing the following values and principles:

(a) service to scholarship and the education of the Australian people;

- (b) responsiveness to the needs of Australia;
- (c) fairness and integrity;
- (d) efficiency and effectiveness;
- (e) accountability for the performance of the University's functions."

5 Constitution of Council

7. Section 11 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (aa) the following paragraph:

"(ab) the Deputy Chancellor;"

- (b) by omitting paragraphs (1) (b) and (c) and substituting the following paragraph:

"(b) 10 persons appointed by the Chief Minister;"

- (c) by omitting from paragraph (1) (e) "one" and "College" and substituting "1" and "Canberra College of Advanced Education" respectively;

- (d) by omitting from paragraph (1) (g) "one" and substituting "1"; and

- (e) by omitting from subsection (4) ", (c)".

Meetings of Council

8. Section 13 of the Principal Act is amended—

- (a) by omitting from subsection (1) "she or he" and substituting "he or she"; and

- (b) by omitting subsection (2) and substituting the following subsections:

"(1A) If the Chancellor is not present at a meeting of the Council, the Deputy Chancellor shall preside at the meeting.

"(2) If neither the Chancellor nor the Deputy Chancellor is present at a meeting of the Council, the members present shall elect 1 of their number to preside at the meeting."

Insertion

9. After section 24 of the Principal Act the following section is inserted:

Deputy Chancellor

"24A. (1) The Council shall appoint a member of the Council or another person to be the Deputy Chancellor of the University.

“(2) The Deputy Chancellor holds office for such period, and on such conditions, subject to the Statutes, as the Council determines.

“(3) The Deputy Chancellor shall act as the Chancellor—

- (a) during any vacancy in the office of Chancellor; or
- 5 (b) when the Chancellor is for any reason unable to perform the functions of the office of Chancellor.”.

Vice-Chancellor and President

10 10. Section 25 of the Principal Act is amended—

- 10 (a) by omitting from subsection (1) “must” and substituting “shall”; and
- (b) by inserting in subsection (1) “and President” after “Vice-Chancellor”.

Substitution

15 11. Section 27 of the Principal Act is repealed and the following section substituted:

Acting appointments

“27. (1) The Council may, in writing, appoint a person to act as Vice-Chancellor—

- 20 (a) during a vacancy in the office of Vice-Chancellor, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Vice-Chancellor is for any reason unable to perform the functions of the office.

25 “(2) A person appointed to act as the Vice-Chancellor during a vacancy in the office of Vice-Chancellor shall not so act continuously for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- 30 (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.”.

Heading to Part 3

12. The heading to Part 3 of the Principal Act is omitted and the following heading substituted:

“PART III—FINANCIAL AND COMMERCIAL MATTERS”.**Substitution**

13. Sections 35, 36, 37 and 39 of the Principal Act are repealed and the following sections and Division are substituted:

5 Investment of moneys

“35. (1) Money of the University not immediately required for the purposes of the University may be invested—

- 10 (a) on deposit with the Reserve Bank of Australia or any other bank approved in writing by the Minister for the time being administering the *Audit Act 1989*;
- (b) in securities of the Territory or Commonwealth;
- (c) on loan to an authorised dealer;
- (d) in clean bills of exchange; or
- 15 (e) in any other manner approved in writing by the Minister for the time being administering the *Audit Act 1989*.

“(2) In subsection (1)—

20 ‘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* of the Commonwealth;

‘clean bill of exchange’ means a bill of exchange that—

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

Application of Division 2 of Part IX of Audit Act

“36. (1) The University is declared to be a public authority to which Division 2 of Part IX of the *Audit Act 1989* applies.

30 “(2) Division 2 of Part IX of the *Audit Act 1989* applies in relation to the University as if—

- (a) section 90 were omitted;
- (b) in subsections 92 (1) and (3) after ‘Minister’ there were inserted ‘and the governing body of the authority’;

- (c) subsections 93 (1) and (1A) were omitted and the following subsections substituted:

‘(1) The authority shall include in its annual report relating to a calendar year—

- 5 (a) financial statements in respect of its operations during that calendar year; and
- (b) the Auditor-General’s report on those financial statements prepared under subsection (2).

10 ‘(1A) The provisions of the *Commonwealth Authorities and Companies Act 1995* of the Commonwealth apply in relation to the preparation of the financial statements as if they were being prepared for inclusion in an annual report of a Commonwealth authority within the meaning of that Act.’;

- 15 (d) in subsection 93 (2) after ‘The authority shall,’ there were inserted ‘within 2 months after 31 December in a year and’; and
- (e) in subsection 93 (2) after ‘Minister’ there were inserted ‘and the governing body of the authority’.

Annual report

20 “37. (1) The Council shall, within 4 months after 31 December in each year, prepare and submit to the Minister for presentation to the Legislative Assembly a report of the operations of the University during the year that ended on that date.

25 “(2) The provisions of the *Commonwealth Authorities and Companies Act 1995* of the Commonwealth apply in relation to the preparation of a report under subsection (1) as if it were a report of operations being prepared for inclusion in an annual report of a Commonwealth authority within the meaning of that Act.

“Division 3—Companies and joint ventures

Controlling interest

30 “38. (1) For the purposes of this Division, the University has a controlling interest in a company if the University holds an interest in the company that enables the University to—

- (a) control the composition of the board of directors of the company;
- 35 (b) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company; or

- (c) control more than 50% of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

5 “(2) For the purposes of this Division, the University has a controlling interest in a joint venture if the University is able to control the acts and things done in the course of the joint venture.

Formation and participation

“39. (1) The University may—

- 10 (a) form, or participate in the formation of, a company; or
- (b) enter into a joint venture with another person;

the objectives or purposes of which are consistent with the functions of the University.

15 “(2) Without limiting the generality of subsection (1), those objectives or purposes may include any of the following:

- (a) providing facilities for study, research or education;
- (b) undertaking research, development, consultancy or other services for commercial organisations, public bodies or individuals;
- 20 (c) aiding or engaging in the development or promotion of university research or the application or use of the results of such research;
- (d) preparing, publishing, distributing or licensing the use of literary or artistic work, audio or audio-visual material or computer software;
- 25 (e) seeking or encouraging gifts to the University or for the purposes of the University;
- (f) promoting or assisting drama, music or the visual arts.

30 “(3) The University shall not form, or participate in the formation of, a company in which the University will have a controlling interest unless the memorandum or articles of association of the company provide that the company shall not alter the memorandum or articles of association unless the Council has by resolution authorised the alteration.

Reporting requirements

“39A. Where the University has a controlling interest in a company or joint venture, the University shall—

- 35 (a) within 14 days after the lodgment of any report, return or statement relating to the company or joint venture with the

Australian Securities Commission, submit a copy of the report, return or statement to the Treasurer; and

- 5 (b) include a summary of the operations of the company or joint venture during a financial year of the company or joint venture, together with a summary of the financial statements in respect of those operations, in the first annual report of the University prepared after the end of that year.

Audit

10 “39B. (1) Where the University has a controlling interest in a company or joint venture, the Auditor-General shall inspect and audit the accounts and records of financial transactions of the company or joint venture and records relating to the assets and securities of, or in the custody of, the company or joint venture.

15 “(2) Section 92 of the *Audit Act 1989* applies in relation to an inspection and audit under subsection (1) as if the company or joint venture were an authority within the meaning of that section.”.

Approval and publication of Statutes

14. Section 42 of the Principal Act is amended—

- 20 (a) by omitting from paragraph (1) (a) “must” and substituting “shall”;
- (b) by omitting from paragraph (1) (b) “must” and “Governor-General” and substituting “shall” and “Executive” respectively;
- (c) by omitting from subsection (2) “Governor-General” and substituting “Executive”;
- (d) by omitting from paragraph (2) (a) “must” and substituting “shall”;
- 25 (e) by omitting from subsection (3) “must” and substituting “shall”;
- (f) by omitting subsection (4) and substituting the following subsections:

“ (4) A legislative Statute is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

30 “(4A) A copy of an administrative Statute shall be laid before the Legislative Assembly within 15 sitting days after the Statute is notified in the *Gazette*.”;

- (g) by omitting from subsection (6) “must” and substituting “shall”;
- and
- 35 (h) by adding at the end the following subsections:

“(8) For the purposes of this section, a Statute is a legislative Statute if it—

- (a) determines the law or alters the content of the law, rather than stating how the law applies in a particular case;
- (b) has the direct or indirect effect of imposing an obligation, creating a right, or varying or removing an obligation or right; and
- (c) is binding in its application.

“(9) For the purposes of this section, a Statute is an administrative Statute if it is not a legislative Statute.”.

Repeal of Part 5

15. Part 5 of the Principal Act is repealed.

Repeal of regulations

16. The University of Canberra (Cessation of Sponsorship) Regulations are repealed.

Formal amendments

17. The Principal Act is amended as set out in the Schedule.

PART III—AMENDMENTS OF OTHER ACTS

Public Sector Management Act 1994

18. Section 5 of the *Public Sector Management Act 1994* is amended—

- (a) by omitting “apply to—” and substituting “apply to any of the following:”;
- (b) by omitting from paragraph (e) “or” (last occurring); and
- (c) by adding at the end the following paragraph:

“(h) the University of Canberra.”.

Sewerage Rates Act 1968

19. Section 6 of the *Sewerage Rates Act 1968* is amended by omitting subparagraph (1) (d) (iii) and substituting the following subparagraph:

- “(iii) if the land is held by the University of Canberra under a lease continued in force by virtue of the operation of subsection 35 (1) of the *Land (Planning and Environment) (Consequential Provisions) Act 1991*;

Water Rates Act 1959

20. Section 7B of the *Water Rates Act 1959* is amended by omitting from subsection (1) “Canberra College of Advanced Education under a lease granted under the *Canberra College of Advanced Education (Leases) Act 1977*” and substituting “University of Canberra under a lease continued in force by virtue of the operation of subsection 35 (1) of the *Land (Planning and Environment) (Consequential Provisions) Act 1991*”.

PART IV—SAVINGS AND TRANSITIONAL PROVISIONS**Continuance in office of Vice-Chancellor**

21. The person who held office immediately before commencement as the Vice-Chancellor of the University of Canberra shall, on and after commencement, continue to hold office as the Vice-Chancellor and President of the University of Canberra.

Acting appointments

22. Despite the repeal of section 27 of the Principal Act, a person appointed to act pursuant to an appointment under that section that was in force immediately before commencement shall, on and after commencement, be taken to have been appointed to act under section 27 of the *University of Canberra Act 1989* as amended by this Act.

Audit reports in first year

23. A report about the University under subsection 92 (3) of the *Audit Act 1989* as modified by this Act in the calendar year in which commencement occurs shall relate only to that part of the calendar year after the *University of Canberra Act 1989* became an enactment.

Financial statements included in first annual report

24. The financial statements included, pursuant to subsection 93 (1) of the *Audit Act 1989* as modified by this Act, in the first annual report of the University prepared after commencement shall relate only to that part of the calendar year after the *University of Canberra Act 1989* became an enactment.

First annual report

25. The first annual report of the University prepared after commencement shall relate only to that part of the calendar year after the *University of Canberra Act 1989* became an enactment.

Application of provisions relating to Statutes

26. Section 42 of the *University of Canberra Act 1989* as amended by this Act applies only in relation to Statutes made on or after commencement.

Continued operation of Part 5

27. Despite the repeal of Part 5 of the Principal Act, a provision in that Part that would, but for that repeal, have continued to apply in relation to a person, matter or thing after the *University of Canberra Act 1989* became an enactment shall continue to apply in relation to that person, matter or thing.

Occupational health and safety

28. (1) A group of employees who, immediately before commencement, was a designated work group in relation to the University under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* of the Commonwealth shall, on and after commencement, be taken to be a designated work group in relation to the University under the *Occupational Health and Safety Act 1989*.

(2) A person who, immediately before commencement, was a health and safety representative in relation to the University under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* of the Commonwealth shall, on and after commencement, be taken to be a health and safety representative in relation to the University under the *Occupational Health and Safety Act 1989*.

PART V—MISCELLANEOUS

20 Regulations

29. (1) The Executive may make regulations amending the provisions of this Act (other than this section), the *University of Canberra Act 1989* or any other Act in relation to any matter arising from, connected with or consequential upon the transfer of responsibility for the University from the Commonwealth to the Territory.

(2) Regulations made under subsection (1) may be expressed to have taken effect at a time earlier than the time at which the regulations are made, not being a time earlier than commencement.

(3) The Executive may only make regulations under subsection (1) during the period of 12 months immediately following commencement.

SCHEDULE

Section 17

Heading to Part 1—

Omit "PART 1", substitute "PART I".

Heading to Part 2—

5 Omit "PART 2", substitute "PART II".

Paragraph 4 (3) (a)—

Omit "and".

Subsections 4 (4) and (5)—

Omit "must" (wherever occurring), substitute "shall".

10 **Paragraphs 6 (1) (a), (b), (c) and (d)—**

Omit "and" (last occurring).

Subsection 6 (2)—

(a) Omit "must", substitute "shall".

(b) Omit "Australian Capital".

15 **Paragraph 7 (2) (k)—**

Omit "Australian Capital".

Subsection 7 (3)—

(a) Omit "In spite of", substitute "Despite".

(b) Omit "must", substitute "shall".

20 **Paragraph 12 (1) (a)—**

Omit "18; or", substitute "18 years of age;".

Paragraph 12 (1) (c)—

Omit "one", substitute "1".

Subsection 12 (2)—

25 Omit "subsection (1)", substitute "paragraph (1) (c)".

Subsections 14 (1), (2) and (3)—

Omit "must" (wherever occurring), substitute "shall".

Paragraphs 15 (1) (a), (b), (c), (d), (e) and (f)—

Omit "or".

SCHEDULE—continued

Subsection 15 (2)—

Omit “one”, substitute “1”.

Subsection 15 (3)—

(a) Omit “or (c)”.

5 (b) Omit “must”, substitute “shall”.

(c) Omit “Governor-General”, substitute “Chief Minister”.

Paragraph 20 (a)—

Omit “her or his”, substitute “his or her”.

Section 21—

10 Omit “her or his”, substitute “his or her”.

Subsection 22 (3)—

Omit “one”, substitute “1”.

Subsection 23 (1)—

Omit “she or he”, substitute “he or she”.

15 **Subsection 23 (2)—**

(a) Omit “must”, substitute “shall”.

(b) Omit “one”, substitute “1”.

Subsection 24 (1)—

Omit “must”, substitute “shall”.

20 **Subsection 29 (2)—**

Omit “merely because of”, substitute “on the ground that”.

Subparagraph 29 (2) (a) (ii)—

Omit “or” (last occurring).

Paragraph 29 (2) (b)—

25 Omit “or” (last occurring).

Subsection 30 (1)—

After “1988” insert “of the Commonwealth”.

Section 33—

(a) After “1988” insert “of the Commonwealth”.

SCHEDULE—continued

(b) Omit “must”, substitute “shall”.

Heading to Part 4—

Omit “PART 4”, substitute “PART IV”.

Subparagraphs 40 (2) (e) (i), (ii), (iii), (iv) and (v)—

5 Omit “and” (last occurring).

Subparagraph 40 (2) (t) (i)—

After “1988” insert “of the Commonwealth”.

Paragraph 41 (1) (a)—

Omit “Australian Capital”.

10 Subsection 41 (2)—

Omit “Australian Capital Territory (including an enactment as defined in section 3 of the *Australian Capital Territory (Self-Government) Act 1988*)”, substitute Territory”.