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**THE LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CANBERRA INSTITUTE OF TECHNOLOGY
(AMENDMENT) BILL 1994**

EXPLANATORY MEMORANDUM

Circulated by authority of

**Mr Bill Wood MLA
Minister for Education and Training**

CANBERRA INSTITUTE OF TECHNOLOGY (AMENDMENT) BILL 1994

OUTLINE

This is an amending Bill. It amends the *Canberra Institute of Technology Act 1987* which is referred to in the Bill as the Principal Act. The Bill establishes a new educational institution, the Australian International Hotel School (referred to as the "Hotel School"), to develop and deliver educational programs on a full cost recovery basis.

The Bill establishes the Australian International Hotel School as a separate entity under the Principal Act reflecting the complementary relationship between the Hotel School and the Canberra Institute of Technology (referred to as the "Institute"). This relationship is reflected in a number of ways throughout the Bill. The first is adding to the functions of the Institute, ie to foster studies in hotel management and related fields by the provision of assistance, educational and other facilities and sponsorship to the Hotel School. The Institute will be able to confer awards on students who have completed courses at the Hotel School, or honorary awards on behalf of the Hotel School. To ensure close cooperation between the two institutions and efficient coordination of their programs the Director of the Institute will also be the Director of the Hotel School.

The Hotel School is distinct from the Institute because it is required to operate on a fee for service basis and to achieve full cost-recovery, in lieu of annual appropriation for its expenses. Therefore the Hotel School is bound by different financial and audit controls, is to have more flexibility in employment of its staff yet it remains fully accountable to the Government.

FINANCIAL IMPLICATIONS

This Bill has no revenue or expenditure implications for the ACT Government recurrent budget. The AIHS is to be a non-profit public education institution and to operate on a full cost recovery basis.

Funds for the Hotel School's initial establishment costs are to be provided by the ACT Treasury as a loan, ie a repayable capital advance, including interest charges. These loan funds are to be fully repaid progressively by the Hotel School.

The Hotel School will generate increased employment and economic activity. It is estimated that the Hotel School will generate up to 170 additional jobs through both direct and indirect increases in spending into the ACT economy. Such an economic stimulus will provide a corresponding boost to ACT revenue through Government taxes and charges.

DETAILS OF INDIVIDUAL CLAUSES

Formal Clauses

Clauses 1, 2 3 and 4 are formal provisions relating to the short title of the Bill, the commencement of section 1 on a date notified in the Gazette and the remaining sections on the dates fixed by the Minister, defining the "Principal Act" to mean the *Canberra Institute of Technology Act 1987* and specifying the long title to include the words "and an associated institution".

Interpretation

Clause 5 amends section 3 by inserting new definitions and substituting the term "an Institution" for "the Institute" in subsection 2 which enables certain provisions to apply to either institution, the CIT or the Hotel School. It also replaces reference to the "Companies Act 1981" with "Corporations Law, being the Law set out in section 82 of the Corporations Act 1989".

Other terms defined are :

"Chairperson" means

- in Part IIIB: the Chairperson of the Council;
- in Division 1 of Part IIIB: the Chairperson of the Management Advisory Board; and
- in Division 2 of Part IIIB: the Chairperson of the Academic Advisory Board.

"Deputy Chairperson means

- in Part IIIB: the Deputy Chairperson of the Council;
- in Division 1 of Part IIIB: the Deputy Chairperson of the Management Advisory Board
- in Division 2 of Part IIIB: the Deputy Chairperson of the Academic Advisory Board.

"Director" means the person holding office by virtue of an appointment under sub-section 11 (1)

"Academic Board" means the Australian International Hotel School Academic Board established under section 18P

"Dean" means the Dean of the Hotel School appointed under section 17A

"Hotel School" means the Australian International Hotel School established by section 7

"Institution" means either the Hotel School or the Institute

"Management Advisory Board" means the Australian International Hotel School Management Advisory Board established under section 18H

Participation at a meeting shall include participation via telephone conference where a person, not physically present, participates by hearing and being heard by other participants at the meeting or by video conference where that person can both see and hear other participants as well as be seen and heard by them.

Part II -- The Institutions

Clause 6 deletes the heading to Part II of the Principal Act and substitutes "Part II - The Institutions" reflecting the fact that the Part now applies to more than one institution. This Part has three divisions:

- Division 1 - Canberra Institute of Technology
- Division 2 - Australian International Hotel School
- Division 3 - Powers and limitations of institutions

Division 1 - Canberra Institute of Technology

Clause 7 amends section 6 to expand the Institute's functions to include fostering studies in hotel management and related fields at the tertiary level and conferring awards, including honorary awards, on persons having completed studies at the Hotel School. This is an important educational linkage between the Institute and the Hotel School enabling the Institute, where appropriate, to ensure that students completing the AIHS program receive an award of the highest standard.

Clause 8 repeals section 7 of the Principal Act, relating to powers of the Institute, and replaces it with the following two new Divisions, headings and sections:

Division 2 - Australian International Hotel School

New section 7 establishes the Hotel School as a body corporate.

New section 7A sets out the objective of the Hotel School which is to conduct, in accordance with the principle of full recovery of costs, an educational institution of international standard.

Functions of the Hotel School

New subsection 7B(1) of the Bill provides that the functions of the Hotel School are:

- (a) to conduct, principally in the Territory, an educational institution for the purpose of fostering the achievement of excellence in study and research in the field of education relating to hotel management and in such other fields as the Director, with the Minister's written approval determines or as the Minister requires. As the Hotel School intends to meet a national and Asia-Pacific region educational need in hotel management education it is appropriate that it be able to operate outside the Territory as required;
- (b) in cooperation with the Institute, to provide courses and programs and to use its own facilities and resources to advance and develop knowledge and skill in the fields of education provided above;
- (c) to support industry and commerce and to assist its development in the Territory and elsewhere in Australia and the Asia Pacific region;
- (d) to promote community awareness and appreciation of hotel management education and to assist broadly with development of the Territory community, eg by providing an economic and employment stimulus to the economy;
- (e) to confer awards;
- (f) to consult and cooperate with the Institute and other institutions, and with persons, associations, organisations and authorities, in relation to the provision of education in hotel management and related fields;

- (g) to make suitable financial arrangements with industry and the commercial community for the purposes of any of the foregoing; and
- (h) to do anything incidental to any of the foregoing.

New subsection 7B(2) provides that, in keeping with the international nature of the Hotel School, any of the above functions can be performed within or outside Australia.

Directions by the Minister

New subsection 7B(3) requires that the Hotel School perform its functions in accordance with any direction given to the Director by the Minister.

New subsection 7B(4)(b) requires such a direction be in writing.

New subsection 7B(5) requires that such a direction shall be notified in the *Gazette* and a copy laid before the Legislative Assembly within 15 sitting days after it is given.

Operations to be Full Cost Recovery

New subsection 7B(6) requires that the Hotel School endeavour, in performing its functions, to operate on a full cost recovery basis, that is to ensure that its revenue is sufficient to meet its expenditure.

Division 3 - Powers and limitations of Institutions

The Bill provides for the institutions to have powers very similar to those already provided for the Institute. The new provisions relating to powers are summarised below with the substantial amendments to the Principal Act *shown in italics*.

Powers

New subsection 7C(1) provides that an Institution has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions. In particular an Institution may:

- (a) enter into contracts, *including contracts with the other Institution*, subject to subsection (2) which requires written Ministerial approval where the contract requires expenditure exceeding an amount specified by regulation;
- (b,c,d) erect buildings or structures, occupy, use and control any land or building owned or leased and made available to the Institution, make available any land or building to the other Institution or to another person;
- (e) accept gifts, grants, devises and bequests, whether on trust or otherwise, and act as trustee of moneys or other property vested in it on trust;
- (f) provide scholarships and other like benefits, *including scholarships tenable or benefits enjoyable at the other Institution*;
- (g) *make charges for work done and services rendered by it, including work done and services rendered to the other Institution*;
- (h) engage persons (*including the other Institution*) as consultants;
- (i) *provide consultative services to any person (including the other Institution)*;

- (j) form, or participate in the formation of, companies, enter into partnership or participate in joint ventures;
- (k) *subscribe for or purchase shares in, or debentures or other securities of a company;*
- (l) provide services, facilities or resources to any company it holds shares in, the members of any partnership it has entered into, the members of any joint venture it participates in *or the other Institution.*
- (m) appoint persons, *including the other Institution*, as agents and attorneys;
- (n) *act as an agent for other persons, including the other Institution;*
- (o) obtain commercial sponsorship for *itself or the other Institution;*
- (p) establish *and conduct* residential facilities *for its staff or students or those of other institutions*, either by itself or in association with *other institutions* or other bodies;
- (q) establish and maintain library, museum, art and other collections either by itself or in association with *the other Institution* or other bodies; and
- (r) do anything incidental to any of its powers.

New section 7C(3) provides that where the exercise of powers under paragraph 7(C)(1)(j) raises revenue it shall be applied exclusively for the use of the Institute,

New section 7C provides that in exercising its powers, the Hotel School shall ensure its operations are efficient and cost effective and shall endeavour to achieve full recovery of costs.

Limitations on formation of companies and partnerships; and on participation in joint ventures

Clause 9 amends section 8 of the Principal Act relating to limitations on the formation of companies without the written approval of the Minister by substituting references to "the Institute" with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School.

Clause 10 amends section 9 of the Principal Act relating to limitations on formation of partnerships by substituting references to "the Institute" with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School.

Clause 11 amends section 10 of the Principal Act relating to limitations on formation of joint ventures by substituting references to "the Institute" with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School.

Clause 12 amends the heading for Part III so it reads: "Part III - Director of Institute", reflecting the inclusion of new Parts IIB and IIID, dealing with the Council and staff, respectively.

PART III - DIRECTOR OF INSTITUTE

Director of the Institute and Hotel School

Clause 13 inserts a new subsection (1A) in section 11 of the Principal Act to provide for a Director of the Hotel School and for the Director of the Institute to also be the Director of the

Hotel School. This is an important link between the Institute and the Hotel School to ensure close cooperation and coordination of the activities of the two institutions.

Functions and Powers of Director

Clause 14 amends section 12 of the Principal Act by adding to the functions of the Director the "general responsibility for management of the Hotel School". The amendments to section 12 also provide that the Director shall have regard to any advice given by the Dean or the Management Advisory Board in discharging his or her functions. Finally clause 11 amends subsection 12(2) to include appropriate references to the Hotel School as well as the Institute.

Clause 15 amends section 13 by providing that specific powers of the Director in the Principal Act to continue to relate only to the Institute. With regard to the Hotel School similar powers are given to the Dean in Part IIIA of the Bill.

Powers of the Director in relation to the Hotel School

Clause 16 inserts a new section 13A giving the Director the power "to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions in relation to the Hotel School". This is consistent with the Director having the general responsibility for management of the Hotel School.

Remuneration of Director

Clause 17 amends section 14 by adding that the remuneration and allowances of the Director shall be paid out of moneys of the Institute. There is no provision for the Director to be paid separately by the Hotel School as Director of the Hotel School.

Part IIIA – Dean of the Hotel School

Clause 18 inserts a new Part IIIA - Dean of the Hotel School. New section 17A provides that the Dean shall be appointed by the Director on advice of the Management Advisory Board. Under new section 17B the Dean shall hold office for such period and on such terms and conditions as are specified in the instrument of his or her appointment.

New section 17C provides that the Dean is to manage the affairs of the Hotel School and perform such other functions as are assigned to him or her by the Director in accordance with the general directions of the Director. In performing his functions the Dean shall also have regard to any advice given by the Management Advisory Board or the Academic Board.

Under new section 17D the Dean has the power to do all things that are necessary or convenient to be done for or in connection with his or her functions. A statement of the particular management powers of the Dean is included, similar to the management powers of the Director of the Institute set out in section 13 of the Principal Act .

New section 17E provides that an Acting Dean may be appointed by the Director during a vacancy in the office of the Dean or during a period when the Dean is temporarily absent or is unable to perform the functions of the office of Dean.

PART IIIB - COUNCIL OF THE INSTITUTE

Clause 19 amends section 18B, dealing with the membership of the Council of the Institute, to provide for an additional member of the Council who shall be a representative of the Management Advisory Board. The Bill makes a corresponding provision for the Management Advisory Board to include a representative from the Institute's Advisory Council.

PART IIIC - MANAGEMENT ADVISORY BOARD AND ACADEMIC ADVISORY BOARD

Clause 20 inserts a new Part IIIC with two divisions:

Division 1 - Management Advisory Board

Division 2 - Academic Board

Division 1 - Management Advisory Board

Functions and Powers

Under new section 18H the Australian International Hotel School Management Advisory Board is established. Pursuant to new section 18I the Board is to advise the Director, in writing, with respect to matters relating to the functions of the Hotel School, particularly:

- (a) the selection of the Dean;
- (b) the goals and objectives of the Hotel School;
- (c) the achievement of the goals and objectives including the educational services to be provided by the Hotel School;
- (d) the welfare of the students of the Hotel School;
- (e) the management of the Hotel School including the management acquisition and disposal of assets and the setting of fees payable to the Hotel School by students;
- (f) the financial policies including the preparation of budgets and financial plans;
- (g) the development of relationships between the Hotel School and the community, the hospitality industry and other educational institutions; and
- (h) the exercise by the Hotel School of any of its powers.

The Board may report in writing to the Minister on any matter relating to the functions of the Hotel School.

Membership

New section 18J provides that the Management Advisory Board will consist of the Dean and up to 8 other Members appointed by the Minister in writing, being the:

- (a) Chairperson
- (b) Deputy Chairperson
- (c) representative of the Director
- (d) representative of the Institute's Advisory Council
- (e) representative of a body or academic institution, other than the Institute or the Hotel School, specified by the Minister by instrument; and
- (f) up to three other Members.

An essential element in the early success of the Hotel School is for it to be affiliated with an international educational institution(or institutions) with established reputations for high quality education in hotel management. Effective affiliation could include the institution's participation on the Management Advisory Board, the Academic Board and in the development and operation of the Hotel School. The Bill provides for the Minister to specify by instrument the institution (or institutions) which are to involved with the Hotel School.

Pursuant to new subsections 18J(2) & (3) members of the Management Advisory Board will hold office for a period not exceeding three years and on the terms and conditions specified in the instrument of appointment. A member of the staff of the Hotel School is not eligible to be appointed Chairperson or Deputy Chairperson.

New section 18K provides that a Member may resign in writing to the Minister. New section 18L provides that the Minister may terminate the appointment of a Member under similar conditions to those applying in relation to the Institute's Advisory Council in the Principal Act. The Minister must terminate an appointment if a member:

- (a) becomes bankrupt;
- (b) is absent from three or more consecutive Board meetings without advising the Chairperson or Minister of reasons for the absence;
- (c) is convicted of an offence punishable on conviction by imprisonment for 1 year or more; or
- (d) fails, without reasonable excuse, to comply with the requirement to disclose pecuniary interests as provided in section 18O.

New section 18M enables the Minister to appoint a person, for a period up to 12 months, to act as Chairperson, Deputy Chairperson or other member during either a vacancy or a period of temporary absence where the appointed Member is unable to perform the functions of the office.

Meetings

New section 18N requires that the Management Advisory Board hold at least four meetings a year with a maximum of 4 months between meetings. Meetings may be convened at any time by the Chairperson, or at the written request of the Director or at least three members. The Chairperson shall preside at Board meetings, or in his absence the Deputy Chairman shall preside. If both are absent, then the Members shall elect a member, other than the Dean to preside. Meetings shall have a quorum of 5 members and a question shall be determined by majority vote of the members present and voting. The member presiding at the meeting shall have a deliberative vote, and, in the event of a tied vote, shall also have a casting vote. A record shall be kept of all meetings .

Disclosure of Interests

New section 18O provides for Members who have a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board to disclose the nature of the interest at the Board Meeting, as soon as possible after the relevant fact have come to the Member's knowledge. Such disclosure shall be recorded in the minutes and the Member shall not be present during any deliberation nor take part in any decision with respect to the matter

unless the Board determines otherwise. Similarly the Member shall not be present nor take part in any decision relating to the Board's determination.

Division 2 - Academic Board

New section 18P provides for the establishment of the Australian International Hotel School Academic Board.

Function of Academic Board

New section 18Q stipulates that the "Academic Board is to advise the Dean on matters relating to education, learning, research or academic work conducted by the Hotel School.

Members

New section 18R provides that the Academic Board shall comprise:

- (a) the Dean or his or her appointee;
- (b) not more than 3 members appointed by the Dean on the nomination of the Institute;
- (c) not more than 3 members appointed by the Dean on the nomination of a body or institution specified by the Minister; and
- (d) up to 5 other members appointed by the Dean.

Members shall be appointed in writing for a period of up to 3 years on terms and conditions specified in the instrument of appointment. A member may resign in writing to the Dean.

New section 18S provides for the Chairperson of the Academic Board to be appointed by the Management Advisory Board from among the Members of the Academic Board. It further provides that, during the first three years from the commencement of the section, the Management Advisory Board shall first obtain the advice of the "institution specified by instrument" regarding the appointment. This enhances the effectiveness of the educational affiliation.

The Chairperson shall hold office for up to three years, or until he or she ceases to be a Member of the Academic Board. The Chairperson may resign in writing to the Chairperson of the Management Advisory Board.

New section 18T provides for the Chairperson to preside at meetings of the Academic Board. In his or her absence the Academic Board shall elect another of its Members to preside at that meeting. A quorum shall be a majority of Members of the Academic Board. The Academic Board shall determine other procedures to be followed in relation to its meetings.

Clause 21 provides for:

PART IIID - STAFF OF THE INSTITUTIONS

Clause 21 inserts a new section 19AA providing that staff of the Hotel School shall consist of persons employed as public servants and persons employed by the Director on behalf of the Hotel School, under agreed terms and conditions. The latter is essential for flexibility in employment arrangements consistent with the Hotel School operating in a commercial environment. It is also important for employment of overseas academic staff, for example staff

temporarily available to the Hotel School through the affiliation arrangements with the international educational institution(s).

It is envisaged that these provisions will be replaced with equivalent provisions in the Public Sector Management legislation.

Personnel Management

Clause 22 amends section 19A relating to personnel management by substituting references to the "Institute" with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School.

It also imposes a requirement for the Hotel School to develop its own equal employment opportunity program over the first three years of operation as it progressively becomes fully operational.

PART IV - FINANCE

Appropriation

Clause 23 amends section 20 so that reference to appropriation of money applies to either Institution. This enables appropriation of money to the Hotel School.

Fees

Clause 24 amends section 21 by adding a new subsection (2A) which stipulates that fees payable to the Hotel School for attendance at courses and programs are as the Director may determine by notice in the *Gazette*.

Estimates

Clause 25 amends section 22 regarding the Institute's preparation of estimates of receipts and expenditure by substituting references to 'the Institute' with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School. It also provides for estimates to be prepared for each financial year rather than the calendar year which is consistent with the Government's budget process.

Monies of institutions

Clause 26 amends section 23 by replacing references to "the Institute" with references to "an Institution"

Application of Money

Clause 27 amends section 24 by substituting references to 'the Institute' with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School.

It inserts a new subsection (2A) which provides that on or after 1 January 2003, if the Hotel School has money that is not required to be applied in accordance with subsection (1) then the Director shall, within three months of the end of the year, notify the Minister of the amount of that money and advise the Minister on the manner of its application. The Minister may then

direct, in writing, that the Hotel School apply any such money in a manner specified in the Minister's direction that is regarded as being consistent with the functions of the Hotel School.

Borrowings

Clause 28 repeals section 25 of the Principal Act which is outdated as borrowings of all Government bodies are now subject to the provisions of the *Audit Act 1989*.

Clause 29 amends section 28 by replacing references to "the Institute" with references to "an Institution". This serves to make this section apply to either the Institute or the Hotel School.

Trust Money and trust Property

Clause 30 repeals section 30 and substitutes a new section 30 which distinguishes for each Institution the appropriate section of the *Audit Act 1989* that applies for approved bank trust accounts. That is section 94 in respect of the Institute and section 89 in respect of the Hotel School.

The new section 30 reflects existing provisions of the Act as to how an Institution should apply, deal with or invest trust money.

Exemption from taxation

Clause 31 amends subsection 31(1) so that it applies to both Institutions. It adds a new subsection (3) which removes the Hotel School's exemption from taxation on 1 January 2003.

Audit

Clause 32 amends section 31A by including the Hotel School as a public authority to which Divisions 1 and 2 of Part IX of the *Audit Act 1989* apply. It also inserts in subsection (2) reference to sections 91 and 92 of the *Audit Act 1989* relating to the keeping of proper accounts and audit for the Hotel School.

Clause 33 amends section 31B by adding new subsections (6) and (7). Subsection (6) stipulates that in relation to the Hotel School, section 93 of the *Audit Act 1989* has effect but as if the financial year is 1 January to 31 December, and as if subsection 93(4) does not apply.

Notification of decisions

Clause 34 amends section 33 of the Principal Act by inserting the provision that where the Dean makes certain decisions then he or she shall, within 28 days of the decision, give notice to the person concerned. The relevant decision are: regarding the admission of a person to a course of study at the Hotel School; or a decision not to confer an award; or a decision precluding a student from attending a course or using facilities of the Hotel School. These provisions are similar to those currently applying to the Institute.

Review by Administrative Appeals Tribunal

Clause 35 amends section 34 of the Principal Act by adding a new subsection (2) which provides for application to the Administration Appeals Tribunal (AAT) for review of a decision of the Hotel School. The matters subject to AAT review are:

- (a) refusing to admit a person to a course of study at the Hotel School under paragraph 17D(1)(g);
- (b) refusing to confer an award on a person under paragraph 17D(1)(h); or

- (c) precluding a student from using facilities or attending part of a course under subsection 17D(3)

These provision are similar to those currently provided for the Institute.

Reports

New subsection 31B(7) provides that the Hotel School shall include in reports of its operations in accordance with section 93 of the *Audit Act 1989*, details of any direction given under subsection 7B(3).

PART V - MISCELLANEOUS

Regulations

Clause 31 amends section 35 by replacing references to "the Institute" with references to "an Institution", enabling regulations to be made in respect of both.

Renumbering of Provisions

Clause 32 enables all of the various parts of the CIT Act, once the amendments have been passed by the Legislative Assembly, to be renumbered in a single series so that they bear consecutive Roman and Arabic numerals as appropriate.