

**1989-90-91**

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**A.C.T. INSTITUTE OF TECHNICAL AND FURTHER EDUCATION  
(AMENDMENT) BILL 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Terry Connolly, MLA  
Attorney General**

**AUSTRALIAN CAPITAL TERRITORY****ACT INSTITUTE OF TECHNICAL AND FURTHER EDUCATION  
(AMENDMENT) BILL 1990****OUTLINE**

This Bill amends the *ACT Institute of Technical and Further Education Act 1987* to provide for equal opportunity in appointment and promotion of staff, and to ensure that these are based on the principle of merit. The Bill also requires the establishment of an equal opportunity program to assist in preventing unlawful discrimination and to promote equal opportunity for women and people in designated groups, as well as for others, to advance their careers in the Authority.

These amendments correspond to similar amendments being made to the establishing Acts of ACT public authorities as an integral part of the package of legislation surrounding the introduction of the *Human Rights and Equal Opportunity Bill 1991*.

The amendments are based on the equal opportunity provisions of the *Public Service Act 1922* and will therefore make the *ACT Institute of Technical and Further Education Act 1987* consistent with the law applying in the rest of the ACT public sector.

**Financial Considerations:** There are no financial considerations involved.

**FORMAL CLAUSES**

**Clases 1 and 2** are formal requirements. They refer to the short title of the Bill, and definition of the Principal Act.

**Clause 3** amends the Principal Act by inserting new Part 3 after Section 19 which contains new section 19A.

**AMENDMENTS****Application of the Bill to the Institute's 'powers in relation to employment matters'**

The key provisions of the Bill appear in subsections 19A(1) and 19A(2). These apply respectively

to the exercise of the Authority's 'powers in relation to employment matters'; and

in relation to selection of persons for engagement as employees of the Institute, and to selection for advancement within the Institute.

An 'employment matter' is defined in subsection 19A(10) and includes selection for engagement as an employee, selection for advancement within the Institute, transfer, training and staff development, conditions of service and any other matter related to the employment of persons by the Authority.

#### **Prohibition of unjustified discrimination, patronage and favouritism**

*Paragraph 19A(1)(a)* provides that decisions in relation to employment matters must be made without unjustified discrimination, patronage and favouritism. 'Unjustified discrimination' (defined in subsection 19A(10)) includes discrimination on the ground of age or social origin, and discrimination prohibited by the *Human Rights and Equal Opportunity Act 1991*. According to subsection 19A(10) discrimination is not unjustified and is therefore permissible if:

- it is not unlawful under the *Human Rights and Equal Opportunity Act 1991*, is essential for the effective performance of the work required and is prescribed; or
- it is not unlawful and is in accordance with an equal opportunity program for the Institute or other program established by the regulations.

*Paragraph 19A(1)(b)* provides that employment decisions must be made with regard to the equal opportunity program of the Institute.

An **equal employment opportunity program** is defined in subsection 19A(10) as a program designed to ensure that unjustified discrimination against designated groups such as Aboriginal people is eliminated and that such groups and women can have, along with others, equal opportunity for advancement and career development.

Subsections (4) to (7) of section 19A set out procedures for establishing and reviewing the programs.

#### **Application of Merit Based Principles to Employment Decisions**

*Subsection 19A(2)* requires that decisions on the selection of persons for engagement by the Institute as employees and for advancement within the Institute are made in accordance with procedures ensuring

- potential applicants, as far as is practicable, have a reasonable opportunity to apply for positions; and
- assessment is on the basis of merit, that is the relative suitability for the position, given the nature and requirements of the job, and the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicant.

The legislation makes it clear that practicality and reasonableness are the benchmarks for required procedures. It is not the intention of the Bill to impose impractical measures or unreasonable and unaffordable advertising and selection procedures as a requirement for appointment and advancement.

This subsection does not apply to temporary staff employed for a period of less than 3 months.

**Subsection 19A(3)** ensures that the Institute can also make reports or recommendations for carrying out of the principles established by this Act.

#### **Equal opportunity program**

**Subsection 19A(4)** requires the Authority to develop and to review from time to time, after consultation with relevant staff organisations and other appropriate persons, an equal employment opportunity program for the Authority.

A 'relevant staff organisation' is defined in subsection 19A(10) as an organisation within the meaning of the *Industrial Relations Act 1988* (C'th) of which employees of the Institute would be eligible for membership, and which is party to an award which covers employees of the Institute.

**Subsections 19A(5), (6), (7) and (8)** require the Director to establish the program as soon as practicable, at least within 12 months of the commencement of this Act, to provide details of the program to the Head of Administration and to take any necessary action to give effect to the equal employment opportunity program. The Head of Administration may issue guidelines on the provisions, development, implementation or review of the program.

Measures adopted by the smaller statutory authorities in establishing equal employment opportunity programs will not have to be as extensive or complex as those of the larger authorities. Also EEO programs may be adapted to the particular nature and needs of the authority involved. Details can also be dealt with in the Guidelines as established by the Head of Administration.

**Subsection 19A(9)** requires the Director to furnish to the Minister an annual report on the operation of the program.

**Subsection 19A(10)** is a definition section, establishing the meaning of the words "designated group"; "employment matter" referred to in subsection 19A(1); "equal employment opportunity program" referred to in subsections 19A(1), 19A(4) to 19A(8); "relevant staff organisation" referred to in subsection 19A(4); and "unjustified discrimination" referred to in subsection 19A(1).