

2014

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

CANBERRA INSTITUTE OF TECHNOLOGY AMENDMENT BILL 2014

EXPLANATORY STATEMENT

**Presented by
Ms Joy Burch MLA
Minister for Education and Training**

Contents

Outline.....	3
1 Name of Act.....	3
2 Commencement	3
3 Legislation Amended	4
4 New Section 3A	4
5 Part 2 Heading and notes	4
6 Establishment of Institute Section 4	4
7 Functions of Institute	4
8 Section 6 heading.....	4
9 Section 6 (1).....	4
10 New section 7.....	4
11 Section 9.....	4
12 Part 3 and part 5	5
13 Section 53.....	5
14 Section 58 heading.....	5
15 Section 58 (1), new note	6
16 Section 58 (2).....	6
17 Meaning of reviewable decision—pt 9, table 61	6
18 Reviewable decision notices Section 62	6
19 Section 64.....	6
20 New part 11.....	6
21 Dictionary, new definition of AQF.....	7
22 Dictionary, definition of chair.....	7
23 Dictionary, new definition of chief executive officer.....	7
24 Dictionary, definition of council.....	7
25 Dictionary, definition of deputy chair.....	7
26 Dictionary, definition of director	7
27 Dictionary, new definition of higher education	7
28 Dictionary, definition of institute.....	7
29 Dictionary, new definition of institute board.....	7
30 Dictionary, definitions of member and para-professional training.....	7
31 Dictionary, new definitions of non-elected member, staff member and student member	8
32 Dictionary, definition of technical and further education.....	8
33 Dictionary, new definition of vocational education and training	8
34 Act—renumbering	8
35 Legislation Act 2001 Dictionary, part 1, new definition of Canberra Institute of Technology	8
36 Legislation Act 2001 Dictionary, part 1, definition of institute of technology.....	8
37 Remuneration Tribunal Act 1995 Schedule 1, part 1.2	8

Outline

The ACT Implementation Plan for the *National Partnership Agreement on Skills Reform 2012-17* required revision to governance arrangements for the public provision of vocational education and training in the ACT to ensure the ongoing viability and effectiveness of the public provider, the Canberra Institute of Technology (CIT).

The purpose of the bill is to prescribe a future governance arrangement whereby CIT can meet the twin objectives of operating as a public provider of vocational education and training and operating with a greater commercial and entrepreneurial focus in an increasingly contestable training marketplace.

In summary, the major amendments propose:

- the establishment of a governing board replacing the existing CIT Advisory Council;
- an independent chair and deputy chair of the governing board with extensive contemporary expertise and knowledge of industry and business;
- the establishment of a Chief Executive Officer (CEO), appointed by the governing board, to replace the director of the institute; and
- that while the governing board will be responsible for setting fees, the Minister is able to issue guidelines on fee setting for government subsidised services with which the governing board must comply.

The effect of the amendments is to create a more agile CIT, able to effectively respond to rapidly changing circumstances, including financial circumstances, in the vocational education and training and higher education market. The bill also makes transitional and minor consequential amendments. The transitional amendment ensures continuity by prescribing that the director on the day before commencement day becomes the CEO until such time as the governing board appoints a CEO within a 12 month period from the commencement day.

1 Name of Act

This is a technical provision stating the name of the Bill if enacted, which is the *Canberra Institute of Technology Amendment Act 2014*.

2 Commencement

This is a technical provision setting the commencement date for the Act.

3 Legislation Amended

This is a technical provision identifying that it is the *Canberra Institute of Technology Act 1987* (CIT Act) that is being amended.

4 New Section 3A

This is a new provision. It is unremarkable as it is a standard provision in legislation and has been included because new section 64 contains offences and the regulation making power anticipates offences.

5 Part 2 Heading and notes

This provision replaces the heading and introductory notes of Part 2 of the CIT Act and is updated and modernised in its language and construction.

6 Establishment of Institute Section 4

This provision is simply a naming convention.

7 Functions of Institute

This provision replaces the current functions of the institute with updated functions. The replacement functions use more modern language, align common terms which are well understood in the vocational and higher education environment and consolidate similar functions. Section 5(1)(d) has been included to clearly articulate that a prescribed function of CIT is to perform the role of public provider of vocational education and training in the ACT.

8 Section 6 heading

This provision is simply the use of a standard naming convention.

9 Section 6 (1)

This provision simply substitutes director with institute to reflect the changed governance arrangements made under the amendments.

10 New section 7

This provision specifically enables the institute to delegate its functions. While it is a new section it replaces the previous power of delegation by the director, which is no longer needed as a result of the replacement of the director by a governing board.

11 Section 9

This provision establishes the institute board as a governing board, provides for the composition of the board membership, the appointment of the board members, the requirements which are to be met before board members can be appointed and prescribes particular eligibility requirements for the appointment of the chair and deputy chair.

Section 8 establishes the governing board. It replaces the advisory council. Except as otherwise provided in this Act, the provisions of the *Financial Management Act 1996* (FMA) will regulate the operations of the governing board including the appointments, functions, the meetings of the board and any prescribed requirements and obligations on it as a territory authority.

Sections 9 and 10 prescribe the composition of the governing board which will be different to the composition of the advisory council it is replacing in that:

- there will be a total of 9-11 members on the governing board whereas the advisory council had 12 members prescribed;
- in addition to the interests of industry or business and knowledge of vocational education and training, the Minister must try to ensure that the membership includes members with social policy expertise, financial expertise and governance, human resources or legal expertise;
- there will be two nominees from specified Government directorates; and
- the CEO must be a member of the governing board, as required by the FMA.

Section 10(3) disapplies section 78(5) of the FMA which would enable more than 2 public servants to be appointed to the governing board and section 10(4) limits the number of public servants to 4. In terms of effectiveness, there is a need for the governing board to have a balance of public service and non-public service membership to meet CIT's twin objectives. Although the governing board will only have 2 nominees from Government directorates, the staff member is also a public servant, necessitating a need to exceed the maximum number of public servants prescribed in the FMA in order to achieve a balance on the governing board. The limit of a maximum of 4 public servants ensures the governing board is predominantly comprised of members who are not public servants while allowing for the possibility that the elected student member may be already employed by a government agency or becomes employed in a government agency.

Section 11 requires the chair and deputy chair to be non-elected members and to have expertise and knowledge of industry and business.

12 Part 3 and part 5

This provision updates and makes explicit the provisions for admitting persons to a course of study and to assessment and also the issuing of awards. It is appropriate that these decisions are reviewable decisions and clause 17 makes provision for such review.

13 Section 53

This provision omits the fees section from section 53 because fees can be charged by the institute in accordance with the FMA. Furthermore, Ministerial guidelines about fees has been prescribed in Section 64A by the operation of clause 19 and is consequently not required in section 53.

14 Section 58 heading

This provision simplifies the language in the heading in respect of trust money and accurately reflects the change made in clause 16 by removing the reference to trust property.

15 Section 58 (1), new note

This provision inserts a new note to assist the reader in understanding that in addition to the CIT Act there is other law which regulates trust activities.

16 Section 58 (2)

Clause 16 removes the prescription about how trust money and trust property is to be regulated as this is provided for by the FMA.

17 Meaning of reviewable decision—pt 9, table 61

This provision updates the earlier provision for review of certain decisions. The language has been modernised and the provision makes it clear that there are 3 distinct reviewable decisions, namely the refusal to admit a person to a course of study or instruction, refusal to admit a person to assessment and refusal to issue an award to a person. It is appropriate that these 3 decisions are capable of review.

18 Reviewable decision notices Section 62

This provision simply substitutes director with institute to reflect the changed governance arrangements made under the Act.

19 Section 64

This provision establishes offences and prescribes penalties for divulging protected information, prescribes how fees are to be determined and enables the institute to determine rules and procedures.

Section 64 is unremarkable in that it is a common legislative provision which enables action to be taken where a person has inappropriately divulged protected information. It establishes offences and prescribes penalties where necessary.

Section 64A is the provision which prescribes that the Minister may make guidelines about certain fees the institute may charge. While the governing board is able to charge fees for educational products and services it offers and delivers, as provided for under the FMA, this provision allows for the Minister to issue guidelines on fee setting for government subsidised services with which the governing board must comply. This prescription strikes a balance between enabling the governing board the capacity to set fees in a competitive and contestable environment while ensuring that the Minister is able to give appropriate guidance about fee setting in particular circumstances. For example, the Minister may direct that a person or class of people are exempted from some or all of the payment of a fee for reasons including that the person, or class of people, are experiencing disadvantage.

Section 64B is a provision which has been included because it is necessary to have criteria for decision making under new sections 12 and 13 (in clause 12).

20 New part 11

This provision is a transitional provision included to ensure continuity of the most senior position in CIT and continued operational effectiveness during the establishment and implementation of the new governing board. It balances the need to ensure the governing board exercises its discretion to appoint a CEO with the ongoing needs of the organisation. Importantly, while the provision enables the person who is director immediately before commencement of the Act to be taken to be the CEO, this

provision ends either with the appointment by the governing board of a CEO or 12 months after commencement of the Act.

21 Dictionary, new definition of AQF

This provision defines AQF (the Australian Qualifications Framework) by reference to the *National Vocational Education and Training Regulator Act 2011* (Cwlth), to maintain consistency of terms.

22 Dictionary, definition of chair

This provision defines chair of the governing board and replaces the definition of deputy chair of the council as the council has been replaced by the governing board.

23 Dictionary, new definition of chief executive officer

This provision defines chief executive officer which is a position required where a governing board is prescribed, in accordance with the FMA.

24 Dictionary, definition of council

This provision removes the definition of council as the council has been replaced by the governing board.

25 Dictionary, definition of deputy chair

This provision defines deputy chair of the governing board and replaces the definition of deputy chair of the council as the council has been replaced by the governing board.

26 Dictionary, definition of director

This provision removes the definition of director as the position of director has been removed from the Act.

27 Dictionary, new definition of higher education

This provision inserts the definition of higher education by reference to the definition in the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth), to maintain consistency of terms.

28 Dictionary, definition of institute

This provision defines institute and refers the reader to section 4 where it is established and first mentioned.

29 Dictionary, new definition of institute board

Clause 28 defines institute board, that is, the governing board of the institute, and refers the reader to section 8 where it is first mentioned.

30 Dictionary, definitions of member and para-professional training

This provision removes definitions no longer required, that is, there is no longer a need to define a council member as the council is abolished and the term ‘para-professional’ is not used in the Act.

31 Dictionary, new definitions of non-elected member, staff member and student member

This provision defines ‘non-elected member’, ‘staff member’ and ‘student member’ by reference to the relevant sections of the Act.

32 Dictionary, definition of technical and further education

This provision removes the definition of technical and further education as it is replaced by the more commonly understood and contemporary term ‘vocational education and training’ in clause 32.

33 Dictionary, new definition of vocational education and training

This provision inserts the definition of vocational education and training by reference to the definition of the AQF, being the Australian Qualifications Framework under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

34 Act—renumbering

Clause 33 is simply a renumbering provision to ensure this occurs when the Act is next republished under the Legislation Act.

35 Legislation Act 2001 Dictionary, part 1, new definition of Canberra Institute of Technology

Clause 34 includes the full title of the Canberra Institute of Technology in the *Legislation Act 2001* replacing the previous definition of ‘institute of technology’.

36 Legislation Act 2001 Dictionary, part 1, definition of institute of technology

Clause 35 removes the definition of ‘institute of technology’ as it is replaced by the definition in clause 34.

37 Remuneration Tribunal Act 1995 Schedule 1, part 1.2

Clause 36 removes the director of the CIT from the schedule to the *Remuneration Tribunal Act 1995* as the Remuneration Tribunal will no longer be required to determine remuneration for the office of director, as it is abolished.