

2018

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

CANBERRA INSTITUTE OF TECHNOLOGY AMENDMENT BILL 2018

EXPLANATORY STATEMENT

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Introduction

This explanatory statement relates to the *Canberra Institute of Technology Amendment Bill 2018* as presented to the Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

The Bill will amend the *Canberra Institute of Technology Act 1987* (the CIT Act).

The *ACT Implementation Plan for the National Partnership Agreement on Skills Reform 2012-17* (NP) included a commitment to support the public training provider to strengthen its capacity to deliver training effectively (a commitment under the ‘efficiency’ pillar). One of the strategies used to support this work was the implementation of revised governance arrangements for CIT, including replacing the previous CIT Advisory Council with a governing board from 2015, which required substantial changes to CIT’s governing legislation, the *Canberra Institute of Technology Act 1987*, via the *Canberra Institute of Technology Amendment Act 2014*.

This bill does not propose further comprehensive amendments to the CIT Act. The purpose of these amendments is to implement changes identified in a review of the governance arrangements undertaken in 2016-17, as well as take the opportunity to update some of the outdated conventions within the CIT Act.

In summary, the amendments propose:

- Substituting references to ‘institute’ with ‘CIT’;
- Aligning language in the legislation to better reflect CIT’s established policies;
- Reducing the minimum number of board members;
- Discontinuing ACT Government board member appointments; and
- Revising membership eligibility criteria.

The effect of the amendments is to create a more agile CIT, able to effectively respond to increasingly competitive and rapidly changing circumstances in the vocational education and training and higher education market. Amending the CIT Act will also further clarify the intent of the CIT Board Membership and ensure appointment of industry experts with the relevant skills to oversee and implement the strategic vision and plan as outlined in CIT’s *Strategic Compass 2020*, whilst also recognising the importance of specific knowledge and expertise in education pedagogy to the quality of the education experience delivered by CIT.

CIT services our community as the ACT's largest public training provider, training around 20,000 students each year. The provision of vocational education and training through CIT is an important element in the ACT Government's commitment to assist people of the ACT to be part of a well-trained and highly skilled workforce.

Human Rights Considerations

No provisions in this Bill engage rights under the *Human Rights Act 2004*.

Notes on Clauses

Clause 1. Name of Act

This clause is a formal provision that sets out the name of the proposed legislation, which is the *Canberra Institute of Technology Amendment Act 2018*.

Clause 2. Commencement

This clause explains that the Bill will take effect on a date notified by the Minister once the legislation amendment has been passed.

Clause 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.

Part 2 Canberra Institute of Technology

Division 2.1 Establishment and functions of the Institute

Clause 4. Section 5 Establishment of CIT

This provision is a technical amendment to replace the term ‘institute’ with ‘CIT’.

Although the Act is titled *Canberra Institute of Technology Act 1987*, references in the Act are solely to the ‘Institute’. There is a clear preference for replacing this with ‘CIT’ to reflect the modern branding and strategic directions outlined in the *Strategic Compass 2020*.

Division 2.2 Institute Board

Clause 5. Section 9 Establishment of CIT Board

This provision is a technical amendment to replace the term ‘the *institute board*’ with ‘the *CIT Board*’.

Subsequently, the term ‘an institute board member’ has been replaced with ‘a CIT board member’ in the Note.

Clause 5. Section 10 CIT Board Members

The role of the Governing Board is established under the *Financial Management Act 1996* (FMA). The functions of the CIT Board as prescribed in section 77 of the FMA include:

- setting CIT policies and strategies;
- governing CIT consistently with the authority's establishing Act and other relevant legislation;
- ensuring, as far as practicable, that CIT operates in a proper, effective and efficient way; and
- ensuring, as far as practicable, that CIT complies with applicable governmental policies (if any).

This clause replaces section 10 of the Act, which specifies the composition of the governing board. This amendment removes the appointment of specified ACT

Government members, and also consequently reduces the minimum number of members from nine to seven, inclusive of the Chair, Deputy Chair and chief executive officer. The maximum number of members has been retained at eleven to ensure flexibility to provide additional expertise and knowledge.

The effect of the amendment to the board membership does not detract from its functions under the Act and the board will still be suitably qualified to enable CIT to meet the functions prescribed in section 6, in particular:

- 6(1)(c): *to support ACT industry and business in pursuing economic growth and sustainability for the community*
- 6(1)(g): *to consult and cooperate with other entities and businesses to promote education and training and employment pathways for learners*
- 6(1)(h): *to make suitable financial arrangements with industry and business for the purpose of the institute's functions.*

Clause 5. Section 11 CIT Board Members – eligibility for appointment

This clause amends section 11(1) and 11(2) of the Act, which specifies the staff and student member eligibility requirement.

Section 78 of the *Financial Management Act 1996* (FMA) specifies the conditions for appointment of governing board members generally, and under FMA 78(5) states that unless the establishing Act otherwise provides, a person must not be appointed as a member if—

- a) the person is a public servant; and
- c) if the governing board has a maximum of more than 6 members—the appointment would result in more than 2 public servants being members of the board.

Whilst section FMA 78(6) contains provision for this clause to not apply if:

- (a) the Minister is satisfied that there are special circumstances justifying the appointment; and
- (b) the Legislative Assembly approves, by resolution, the appointment

for the avoidance of any concern regarding the eligibility for appointment of a student representative, section 11(2)(c) has been added to specify that the student member must not be a public servant.

The amendment also clarifies the role of the student and staff member positions on the Board.

Clause 5 further amends the current eligibility requirements in section 11(5)(b) of the Act, replacing them with those in the bill's s 11(3). s 11(3) identifies the expertise and knowledge required by board members.

The review report identified that better subject-matter expertise was required amongst Board Members to capture a wider industry network and more engagement opportunities for CIT and to bring a more commercial focus to the implementation of the *Strategic Compass 2020*. The existing provision is replaced with a redrafted provision that refocuses the desired board member expertise. Whilst the changes to this section are as the whole minimal, in particular the removal of some of the specificity and addition of 'infrastructure' will ensure the board is equipped to better

respond to challenges in areas such as resource allocation, asset management and financial management.

In addition to the board member expertise identified through the review report, a further skill set has been included to reflect the importance of education pedagogy in ensuring the CIT Board continues to make decisions in the interest of best teaching practice and access for all students.

A set of detailed selection documentation has been developed by CIT which identifies the specific skill set and desired experience and expertise to be met by future board membership appointments.

Clause 6. Section 12 Chair and deputy chair— eligibility for appointment

This amendment omits section 12 of the Act, as the Chair and Deputy Chair appointments are governed by Section 79 of the *Financial Management Act 1996*.

Part 3 Admission to courses and issuing awards

Clause 7. Section 13 Decisions on admission to the institute

This clause makes a technical amendment to section 13(2) of the Act, which relates to the decisions about admission or assessment. This amendment is made for the reason specified in the notes for section 25 and is consequential to the new section 14A.

The effect of the amendment is that CIT has established published policies which are used to inform decisions about these matters.

Clause 7. Section 14 Decisions on issuing awards

This clause makes a technical amendment to section 14(2) of the Act, which relates to the decisions about issuing awards. This amendment is made for the reason specified in the notes for clause 25 and is consequential to the new section 14A.

The effect of the amendment is that CIT has established published policies which are used to inform decisions about these matters.

Clause 8. New Section 14A

This clause inserts a new section, which provides for the CIT board to establish policies on admissions and awards. This provision is related to section 13(2) and 14(2) and replaces section 25.

The intended effect of this clause is to reflect that CIT has already published policies on admission and conferring of awards on its website. This clause ensures that a person has access to this information where a review of any decision is sought.

Clause 9. Section 15 (2) note Institute’s staff

This provision is a technical amendment to replace the term ‘director’ with ‘chief executive officer’.

Part 7 Miscellaneous

Clause 10. Section 25

This clause is a consequential amendment. Section 25 will be made redundant by the amendments under sections 13(2) and 14(2) and the addition of new section 14A.

While it was not a requirement for the CIT Board to make any rules and procedures under section 25, the totality of the legislative provisions (as specified in the former sections 13(2) and 14(2), and referred to in sections 20, 21 and 25) may have led to the view that it should have done so.

In meeting its obligation under the Act with regard to admission and conferring of awards, CIT relies on its policies published on its website to provide a regime for determining decisions. There is no perceived benefit for this regulatory requirement and in removing this provision there is considered to be no impact on a person's right to a review of any decisions made under section 13(2) and 14(2).

Dictionary

Clause 11. Dictionary, new definition of CIT and CIT board

This is a technical amendment. It replaces the term 'institute' with CIT and is consequential on the change to clause 5.

Clause 12. Dictionary, definitions

This clause is a consequential amendment. Amendments to the main Act will make these definitions redundant.

Clause 13. Dictionary, definitions of *staff member* and *student member*

This clause is a technical amendment and defines the student and staff member positions.

Other provisions

Clause 14. Further amendments, mentions of institute

This provision is to replace any instances of the term 'institute' with 'CIT' as referred under clause 4.

Clause 15. Further amendments, mentions of institute

This provision is to replace any instances of the term 'institute's' with 'CIT's' as referred under clause 4.