



Australian Capital Territory

Canberra Institute of Technology Amendment Act 2014

A2014-55

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Australian Capital Territory

Canberra Institute of Technology Amendment Act 2014

A2014-55

An Act to amend the *Canberra Institute of Technology Act 1987*, and for other purposes

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

1 Name of Act

This Act is the *Canberra Institute of Technology Amendment Act 2014*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) However, if this Act has not commenced before 1 July 2015, it automatically commences on that day.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Canberra Institute of Technology Act 1987*.

Note This Act also amends other legislation (see s 35 to s 37).

4 New section 3A

in part 1, insert

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 Part 2 heading and notes

substitute

Part 2 Canberra Institute of Technology**Division 2.1 Establishment and functions of institute**

Note The governance of territory authorities, including the Canberra Institute of Technology, is regulated by the [Financial Management Act 1996](#) (the *FMA*), pt 9 as well as the Act that establishes them.

The [FMA](#), pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

**6 Establishment of institute
Section 4**

after

Technology

insert

(the *institute*)

7 Section 5

substitute

5 Functions of institute

- (1) The institute has the following functions:
- (a) to conduct an educational institution to provide excellence in study in the fields of vocational education and training and higher education that—
 - (i) the institute board, with the Minister’s written approval, decides; or
 - (ii) the Minister directs;
 - (b) to provide educational products and services, and use the facilities and resources of the institute, to advance and develop knowledge and skills in the community;
 - (c) to support ACT industry and business in pursuing economic growth and sustainability for the community;
 - (d) to perform the role of public provider of vocational education and training in the ACT;
 - (e) to issue awards to people who have satisfactorily completed a course of study at the institute;
 - (f) to issue awards posthumously and to issue honorary awards;

- (g) to consult and cooperate with other entities and businesses to promote education and training and employment pathways for learners;
 - (h) to make suitable financial arrangements with industry and business for the purpose of the institute's functions under paragraphs (a) to (e).
- (2) The institute may exercise any other function given to it under this Act or another territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

8 Section 6 heading

substitute

6 Ministerial directions

9 Section 6 (1)

omit

director

substitute

institute

10 New section 7

insert

7 Delegation by institute

The institute may delegate the institute's functions to—

- (a) the chief executive officer; or

(b) a member of the staff of the institute.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

11 Section 9

substitute

Division 2.2 Institute board

8 Establishment of institute board

The governing board of the institute (the *institute board*) is established.

Note An appointment of an institute board member is an appointment under this section (see [Financial Management Act 1996](#), s 78 (7) (b)).

9 Institute board members

- (1) The institute board has at least 9, but not more than 11, members.
- (2) The institute board must include the following members:

(a) a chair;

Note 1 The chair of the institute board must be appointed under the [Financial Management Act 1996](#), s 79.

Note 2 The chair must be one of the non-elected members of the board (see s 11).

(b) the chief executive officer;

Note The chief executive officer is a member of the institute board (see [Financial Management Act 1996](#), s 80 (4)).

(c) 1 member of the staff of the institute (the *staff member*);

(d) 1 student at the institute (the *student member*);

(e) 1 member who is a public servant in the administrative unit responsible for education and training;

- (f) 1 member who is a public servant in the administrative unit responsible for economic development;
- (g) at least 4, but not more than 6, other members (the *non-elected members*).

10 Institute board members—eligibility for appointment

- (1) The Minister may appoint a person as the staff member only if the person—
 - (a) is a member of the staff of the institute; and
 - (b) has been nominated by the members of staff of the institute to represent the staff on the institute board.
- (2) The Minister may appoint a person as the student member only if the person—
 - (a) is a student at the institute; and
 - (b) has been nominated by the students at the institute to represent the students on the institute board.
- (3) The *Financial Management Act 1996*, section 78 (5) does not apply to the appointment of a member.
- (4) However, the Minister may not appoint a person who is a public servant as a non-elected member of the institute board if the number of members who are public servants would exceed 4.
- (5) In appointing the members of the institute board, the Minister must ensure that—
 - (a) at least 2 non-elected members have expertise and knowledge of industry and business; and
 - (b) as far as practicable expertise and knowledge in the following areas are represented among the members generally:
 - (i) vocational education and training and digital learning;

- (ii) social policy issues including access, equity and diversity issues;
- (iii) finance;
- (iv) governance, human resources, risk management or the law.

11 Chair and deputy chair—eligibility for appointment

The Minister may appoint a person as the chair or the deputy chair of the institute board only if the person—

- (a) is a non-elected member; and
- (b) has expertise and knowledge of industry and business.

Note The chair and deputy chair of the institute board must be appointed under the *Financial Management Act 1996*, s 79.

12 Parts 3 and 5

substitute

Part 3 Admission to courses and issuing awards

12 Decisions on admission to institute

- (1) The institute may admit a person to—
 - (a) a course of study or instruction of the institute; or
 - (b) an assessment by the institute.
- (2) In deciding whether to admit a person under subsection (1), the institute must consider any rules or procedures of the institute board for admission to the institute.

13 Decisions on issuing awards

- (1) The institute may issue an award to a person who has completed a course of study at the institute.
- (2) In deciding whether to issue an award to a person under subsection (1), the institute must consider any rules or procedures of the institute board for issuing awards.

**13 Fees
Section 53**

omit

14 Section 58 heading

substitute

58 Trust money**15 Section 58 (1), new note**

insert

Note Trustees also have a number of powers and duties under both the common law and statute law.

16 Section 58 (2)

omit

17 **Meaning of *reviewable decision*—pt 9**
Table 61

substitute

Table 61 **Reviewable decisions**

column 1 item	column 2 section	column 3 decision	column 4 entity
1	12 (1) (a)	refuse to admit person to course of study or instruction of institute	person refused admission
2	12 (1) (b)	refuse to admit person to assessment by institute	person refused assessment
3	13 (1)	refuse to issue award to person	person refused award

18 **Reviewable decision notices**
Section 62

omit

director

substitute

institute

19 **Section 64**

substitute

64 **Offences—use or divulge protected information**

- (1) A person to whom this section applies commits an offence if—
- (a) the person uses information; and
 - (b) the information is protected information about someone else; and

- (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
 - (a) the person does something that divulges information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply if the information is used or divulged—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding.
- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

(5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

(6) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes—

- (a) communicate; or
- (b) publish.

person to whom this section applies means—

- (a) a person who is or has been a member of the institute board; or
- (b) anyone else who has exercised a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

Example—protected information

information obtained by the institute about an applicant for admission to a course of study at the institute

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

use information includes make a record of the information.

Note The [Crimes Act 1900](#), s 153 also deals with disclosure of information by public employees or people performing services for the Territory or a territory authority. This section applies to members of the institute board and anyone else who has exercised a function under this Act.

64A Ministerial guidelines about fees

- (1) The Minister may make guidelines in relation to fees that may be charged by the institute for educational products and services it provides that are wholly or partly funded by the Territory.
- (2) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

64B Determination of rules and procedures

- (1) The institute may determine rules and procedures for this Act, including—
 - (a) rules for admission to a course of study or instruction of the institute; and
 - (b) rules for admission to assessment by the institute; and
 - (c) procedures for seeking an internal review of a decision of the institute about conferring an award.
- (2) A determination is a notifiable instrument.

Note Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

Note A notifiable instrument must be notified under the [Legislation Act](#).

20 **New part 11**

insert

Part 11 **Transitional—Canberra Institute
of Technology Amendment
Act 2014**

66 **Definitions—pt 11**

In this part:

commencement day means the day this part commences.

director means the director appointed under this Act, section 14, as in force immediately before the commencement day.

67 **Director is chief executive officer**

- (1) This section applies to the person who, immediately before the commencement day, is the director.
- (2) The person is taken to be appointed by the institute board as the chief executive officer on the same conditions that applied to the person's appointment as director.
- (3) Unless sooner ended, the appointment ends on the earlier of—
 - (a) the commencement of the appointment of a new chief executive officer under the *Financial Management Act 1996*, section 80; and
 - (b) 12 months after the commencement day.

68 Expiry—pt 11

This part expires 1 year after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

21 Dictionary, new definition of *AQF*

insert

AQF means the Australian Qualifications Framework under the [National Vocational Education and Training Regulator Act 2011](#) (Cwlth), section 3.

22 Dictionary, definition of *chair*

substitute

chair means the chair of the institute board appointed by the Minister under the [Financial Management Act 1996](#), section 79.

23 Dictionary, new definition of *chief executive officer*

insert

chief executive officer means the chief executive officer of the institute.

24 Dictionary, definition of *council*

omit

25 Dictionary, definition of *deputy chair*

substitute

deputy chair means the deputy chair of the institute board appointed by the Minister under the [Financial Management Act 1996](#), section 79.

26 Dictionary, definition of *director*

omit

27 Dictionary, new definition of *higher education*

insert

higher education means education in relation to which a higher education award, within the meaning of the [Tertiary Education Quality and Standards Agency Act 2011](#) (Cwlth), may be issued.

28 Dictionary, definition of *institute*

substitute

institute—see section 4.

29 Dictionary, new definition of *institute board*

insert

institute board—see section 8.

30 Dictionary, definitions of *member* and *para-professional training*

omit

31 Dictionary, new definitions

insert

non-elected member, of the institute board—see section 9 (2) (g).

staff member, of the institute board—see section 9 (2) (c).

student member, of the institute board—see section 9 (2) (d).

32 Dictionary, definition of *technical and further education*

omit

33 Dictionary, new definition of *vocational education and training*

insert

vocational education and training means the education and training and qualifications and statements of attainment under the vocational education and training provisions of the Australian Qualifications Framework (*AQF*).

34 Canberra Institute of Technology Act 1987—renumbering

renumber provisions when Act next republished under Legislation Act

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

insert

Canberra Institute of Technology means the Canberra Institute of Technology under the [Canberra Institute of Technology Act 1987](#).

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

omit

**37 Remuneration Tribunal Act 1995
Schedule 1, part 1.2**

omit

- director of the Canberra Institute of Technology

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 October 2014.

2 Notification

Notified under the [Legislation Act](#) on 3 December 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Canberra Institute of Technology Amendment Bill 2014, which was passed by the Legislative Assembly on 25 November 2014.

Clerk of the Legislative Assembly

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