

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Education and Training)

Canberra Institute of Technology Amendment Bill 2014

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 New section 3A	3
5 Part 2 heading and notes	3
6 Establishment of institute	
Section 4	4
7 Section 5	4
8 Section 6 heading	5
9 Section 6 (1)	5

J2014-371

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
10	New section 7	5
11	Section 9	6
12	Parts 3 and 5	8
13	Fees Section 53	9
14	Section 58 heading	9
15	Section 58 (1), new note	9
16	Section 58 (2)	9
17	Meaning of <i>reviewable decision</i> —pt 9 Table 61	10
18	Reviewable decision notices Section 62	10
19	Section 64	10
20	New part 11	14
21	Dictionary, new definition of <i>AQF</i>	15
22	Dictionary, definition of <i>chair</i>	15
23	Dictionary, new definition of <i>chief executive officer</i>	15
24	Dictionary, definition of <i>council</i>	15
25	Dictionary, definition of <i>deputy chair</i>	15
26	Dictionary, definition of <i>director</i>	16
27	Dictionary, new definition of <i>higher education</i>	16
28	Dictionary, definition of <i>institute</i>	16
29	Dictionary, new definition of <i>institute board</i>	16
30	Dictionary, definitions of <i>member</i> and <i>para-professional training</i>	16
31	Dictionary, new definitions	16
32	Dictionary, definition of <i>technical and further education</i>	17
33	Dictionary, new definition of <i>vocational education and training</i>	17
34	Canberra Institute of Technology Act 1987—renumbering	17
35	Legislation Act 2001 Dictionary, part 1, new definition of <i>Canberra Institute of Technology</i>	17

Contents

		Page
36	Legislation Act 2001 Dictionary, part 1, definition of <i>institute of technology</i>	17
37	Remuneration Tribunal Act 1995 Schedule 1, part 1.2	17

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Education and Training)

Canberra Institute of Technology Amendment Bill 2014

A Bill for

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:

J2014-371

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

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

4 **2 Commencement**

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

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

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

12 (2) However, if this Act has not commenced before 1 July 2015, it
13 automatically commences on that day.

14 (3) The [Legislation Act](#), section 79 (Automatic commencement of
15 postponed law) does not apply to this Act.

16 **3 Legislation amended**

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

18 *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.

1 **6 Establishment of institute**
2 **Section 4**

3 *after*

4 Technology

5 *insert*

6 (the *institute*)

7 **7 Section 5**

8 *substitute*

9 **5 Functions of institute**

10 (1) The institute has the following functions:

11 (a) to conduct an educational institution to provide excellence in
12 study in the fields of vocational education and training and
13 higher education that—

14 (i) the institute board, with the Minister's written approval,
15 decides; or

16 (ii) the Minister directs;

17 (b) to provide educational products and services, and use the
18 facilities and resources of the institute, to advance and develop
19 knowledge and skills in the community;

20 (c) to support ACT industry and business in pursuing economic
21 growth and sustainability for the community;

22 (d) to perform the role of public provider of vocational education
23 and training in the ACT;

24 (e) to issue awards to people who have satisfactorily completed a
25 course of study at the institute;

26 (f) to issue awards posthumously and to issue honorary awards;

- 1 (g) to consult and cooperate with other entities and businesses to
 2 promote education and training and employment pathways for
 3 learners;
- 4 (h) to make suitable financial arrangements with industry and
 5 business for the purpose of the institute's functions under
 6 paragraphs (a) to (e).
- 7 (2) The institute may exercise any other function given to it under this
 8 Act or another territory law.
- 9 *Note* A provision of a law that gives an entity (including a person) a function
 10 also gives the entity powers necessary and convenient to exercise the
 11 function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

8 Section 6 heading

13 *substitute*

6 Ministerial directions

9 Section 6 (1)

16 *omit*

17 director

18 *substitute*

19 institute

10 New section 7

21 *insert*

7 Delegation by institute

23 The institute may delegate the institute's functions to—

24 (a) the chief executive officer; or

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

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

4 **11 Section 9**

5 *substitute*

6 **Division 2.2 Institute board**

7 **8 Establishment of institute board**

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

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

12 **9 Institute board members**

13 (1) The institute board has at least 9, but not more than 11, members.

14 (2) The institute board must include the following members:

15 (a) a chair;

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

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

20 (b) the chief executive officer;

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

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

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

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

- 1 (f) 1 member who is a public servant in the administrative unit
2 responsible for economic development;
- 3 (g) at least 4, but not more than 6, other members (the *non-elected*
4 *members*).
- 5 **10 Institute board members—eligibility for appointment**
- 6 (1) The Minister may appoint a person as the staff member only if the
7 person—
- 8 (a) is a member of the staff of the institute; and
- 9 (b) has been nominated by the members of staff of the institute to
10 represent the staff on the institute board.
- 11 (2) The Minister may appoint a person as the student member only if
12 the person—
- 13 (a) is a student at the institute; and
- 14 (b) has been nominated by the students at the institute to represent
15 the students on the institute board.
- 16 (3) The *Financial Management Act 1996*, section 78 (5) does not apply
17 to the appointment of a member.
- 18 (4) However, the Minister may not appoint a person who is a public
19 servant as a non-elected member of the institute board if the number
20 of members who are public servants would exceed 4.
- 21 (5) In appointing the members of the institute board, the Minister must
22 ensure that—
- 23 (a) at least 2 non-elected members have expertise and knowledge
24 of industry and business; and
- 25 (b) as far as practicable expertise and knowledge in the following
26 areas are represented among the members generally:
- 27 (i) vocational education and training and digital learning;

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

6 **11 Chair and deputy chair—eligibility for appointment**

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

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

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

13 **12 Parts 3 and 5**

14 *substitute*

15 **Part 3 Admission to courses and**
16 **issuing awards**

17 **12 Decisions on admission to institute**

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

1 **13 Decisions on issuing awards**

2 (1) The institute may issue an award to a person who has completed a
3 course of study at the institute.

4 (2) In deciding whether to issue an award to a person under
5 subsection (1), the institute must consider any rules or procedures of
6 the institute board for issuing awards.

7 **13 Fees**
8 **Section 53**

9 *omit*

10 **14 Section 58 heading**

11 *substitute*

12 **58 Trust money**

13 **15 Section 58 (1), new note**

14 *insert*

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

17 **16 Section 58 (2)**

18 *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

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

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

5 (2) A person to whom this section applies commits an offence if—

6 (a) the person does something that divulges information; and

7 (b) the information is protected information about someone else;
8 and

9 (c) the person is reckless about whether—

10 (i) the information is protected information about someone
11 else; and

12 (ii) doing the thing would result in the information being
13 divulged to someone else.

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

16 (3) Subsections (1) and (2) do not apply if the information is used or
17 divulged—

18 (a) under this Act or another territory law; or

19 (b) in relation to the exercise of a function, as a person to whom
20 this section applies, under this Act or another territory law; or

21 (c) in a court proceeding.

22 (4) Subsections (1) and (2) do not apply to the using or divulging of
23 protected information about a person with the person's consent.

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

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

5 (6) In this section:

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

8 *divulge* includes—

9 (a) communicate; or

10 (b) publish.

11 *person to whom this section applies* means—

12 (a) a person who is or has been a member of the institute board; or

13 (b) anyone else who has exercised a function under this Act.

14 *produce* includes allow access to.

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

19 **Example—protected information**

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

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

25 *use information* includes make a record of the information.

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

1 **64A Ministerial guidelines about fees**

2 (1) The Minister may make guidelines in relation to fees that may be
3 charged by the institute for educational products and services it
4 provides that are wholly or partly funded by the Territory.

5 (2) A guideline is a notifiable instrument.

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

7 **64B Determination of rules and procedures**

8 (1) The institute may determine rules and procedures for this Act,
9 including—

10 (a) rules for admission to a course of study or instruction of the
11 institute; and

12 (b) rules for admission to assessment by the institute; and

13 (c) procedures for seeking an internal review of a decision of the
14 institute about conferring an award.

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

19 (2) A determination is a notifiable instrument.

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

1 **20** **New part 11**

2 *insert*

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

6 **66** **Definitions—pt 11**

7 In this part:

8 *commencement day* means the day this part commences.

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

11 **67** **Director is chief executive officer**

12 (1) This section applies to the person who, immediately before the
13 commencement day, is the director.

14 (2) The person is taken to be appointed by the institute board as the
15 chief executive officer on the same conditions that applied to the
16 person's appointment as director.

17 (3) Unless sooner ended, the appointment ends on the earlier of—

18 (a) the commencement of the appointment of a new chief
19 executive officer under the *Financial Management Act 1996*,
20 section 80; and

21 (b) 12 months after the commencement day.

1 **68 Expiry—pt 11**

2 This part expires 1 year after the commencement day.

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

6 **21 Dictionary, new definition of AQF**

7 *insert*

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

11 **22 Dictionary, definition of chair**

12 *substitute*

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

15 **23 Dictionary, new definition of chief executive officer**

16 *insert*

17 *chief executive officer* means the chief executive officer of the
18 institute.

19 **24 Dictionary, definition of council**

20 *omit*

21 **25 Dictionary, definition of deputy chair**

22 *substitute*

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

- 1 **26 Dictionary, definition of *director***
- 2 *omit*
- 3 **27 Dictionary, new definition of *higher education***
- 4 *insert*
- 5 *higher education* means education in relation to which a higher
- 6 education award, within the meaning of the *Tertiary Education*
- 7 *Quality and Standards Agency Act 2011* (Cwlth), may be issued.
- 8 **28 Dictionary, definition of *institute***
- 9 *substitute*
- 10 *institute*—see section 4.
- 11 **29 Dictionary, new definition of *institute board***
- 12 *insert*
- 13 *institute board*—see section 8.
- 14 **30 Dictionary, definitions of *member* and *para-professional***
- 15 ***training***
- 16 *omit*
- 17 **31 Dictionary, new definitions**
- 18 *insert*
- 19 *non-elected member*, of the institute board—see section 9 (2) (g).
- 20 *staff member*, of the institute board—see section 9 (2) (c).
- 21 *student member*, of the institute board—see section 9 (2) (d).

- 1 **32 Dictionary, definition of *technical and further education***
- 2 *omit*
- 3 **33 Dictionary, new definition of *vocational education and***
- 4 ***training***
- 5 *insert*
- 6 *vocational education and training* means the education and training
- 7 and qualifications and statements of attainment under the vocational
- 8 education and training provisions of the Australian Qualifications
- 9 Framework (*AQF*).
- 10 **34 Canberra Institute of Technology Act 1987—renumbering**
- 11 *renumber provisions when Act next republished under Legislation*
- 12 *Act*
- 13 **35 Legislation Act 2001**
- 14 **Dictionary, part 1, new definition of *Canberra Institute of***
- 15 ***Technology***
- 16 *insert*
- 17 *Canberra Institute of Technology* means the Canberra Institute of
- 18 Technology under the *Canberra Institute of Technology Act 1987*.
- 19 **36 Legislation Act 2001**
- 20 **Dictionary, part 1, definition of *institute of technology***
- 21 *omit*
- 22 **37 Remuneration Tribunal Act 1995**
- 23 **Schedule 1, part 1.2**
- 24 *omit*
- 25
 - 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 2014.

3 Republications of amended laws

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

© Australian Capital Territory 2014