

# NORTHERN TERRITORY OF AUSTRALIA

## BATCHELOR INSTITUTE OF INDIGENOUS TERTIARY EDUCATION ACT

As in force at 28 August 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 28 August 2013

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## BACHELOR INSTITUTE OF INDIGENOUS TERTIARY EDUCATION ACT

**An Act to establish an educational institution for the tertiary education of indigenous people of Australia and the provision of other educational and training programs and courses, and facilities and resources for research and study, and for related purposes**

### Part 1 Preliminary matters

#### 1 Short title

This Act may be cited as the *Batchelor Institute of Indigenous Tertiary Education Act*.

#### 2 Commencement

This Act comes into operation on 1 July 1999.

#### 3 Interpretation

(1) In this Act:

***appointed Board member*** means a member of the Board appointed under section 24B(1)(b).

***appointed Council member*** means a member of the Council appointed under section 11(1)(a), (b) or (c).

***Batchelor College*** means Batchelor College established under Part 6 of the *Education Act* and in existence immediately before the commencement of this Act.

***Board*** means the Institute Advisory Board established by section 24.

***By-laws*** means by-laws made under section 49.

***CDU Council*** means the Council of Charles Darwin University.

***code of conduct*** means a code of conduct made by the Council under section 52 and includes a provision of a code of conduct.

**Council** means the Council of the Institute established by section 10.

**Council committee** means the Nominations Committee or a committee established under section 23.

**Director** means the Director of the Institute appointed under section 27.

**Education Agency** means the Agency with primary responsibility for the administration of the *Education Act*.

**elected Council member** means a member of the Council mentioned in section 11(1)(d) or (e).

**entity** includes an Institute entity.

**graduate** means a member of a class of persons determined under the By-laws to be graduates for this Act.

**indigenous people** means people who are Aboriginal or Torres Strait Islanders.

**Institute** means the Batchelor Institute of Indigenous Tertiary Education established by section 4.

**Institute entity** means the Council, a Council committee or the Board.

**Nominations Committee** means the committee established by section 22(1).

**northern region of the Territory** means the area of the Territory above the 17<sup>th</sup> parallel of south latitude (which lies approximately 61 km north of Elliott).

**rules** means rules made under section 51.

**southern region of the Territory** means the area of the Territory below the 17<sup>th</sup> parallel of south latitude (which lies approximately 61 km north of Elliott).

**staff** means the Director, Deputy Director, academic or other salaried staff of the Institute or any other personnel employed by the Institute.

**student** means a person enrolled as a student of the Institute.

- (2) In this Act:
  - (a) a reference to the Chairperson of an Institute entity includes a reference to a member of the Institute entity acting in, or performing the duties of, the Chairperson; and
  - (b) a reference to the Director includes a reference to the Deputy Director acting as, or performing the functions of, the Director as mentioned in section 28(3).
- (3) A reference in this Act to the term of office of a member of an Institute entity includes a reference to:
  - (a) in relation to a member who vacates his or her office before the expiry of his or her term of office – the part of the term served by that member; and
  - (b) in relation to a member appointed to fill a vacancy under section 17(1) – the part of the term served by that member.

## **Part 2 Institute**

### **4 Establishment of Institute**

- (1) The Batchelor Institute of Indigenous Tertiary Education is established.
- (2) The Institute:
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real, leasehold and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially must take judicial notice of the common seal of the Institute affixed to a document and must presume that it was duly affixed.

### **5 Institute replaces Batchelor College**

- (1) The Institute is established in place of Batchelor College.
- (2) On the commencement of this Act, Batchelor College ceases to exist but the body corporate that was Batchelor College is preserved and continues subject to this Act as the Institute.

## **6 Composition of Institute**

The Institute consists of:

- (a) the members of the Council; and
- (b) the graduates of the Institute and Batchelor College; and
- (c) the holders of awards other than degrees from the Institute and Batchelor College; and
- (d) the staff of the Institute; and
- (e) the students of the Institute.

## **7 Functions of Institute**

(1) The functions of the Institute are to:

- (a) provide tertiary education relevant to the needs of indigenous people; and
- (b) generally facilitate, encourage, develop and improve study and research, particularly in subjects of relevance to indigenous people; and
- (c) provide other educational programs and courses of study or instruction, including vocational education and training, courses of higher education and cultural studies; and
- (d) accredit the educational programs and courses offered by the Institute; and
- (e) review at regular intervals the programs and courses to be provided by the Institute; and
- (f) confer awards in respect of the programs and courses it provides and honorary and other awards on persons the Council considers merit special recognition; and
- (g) co-operate, collaborate and consult with other institutions of higher education, vocational education and training or research, whether within or outside of Australia, for the purpose of performing its functions; and
- (h) liaise with industry, trade, commerce, the community, educational and training bodies and professional organisations on matters of common interest; and



- (j) advance research and scholarship and their practical application to education, industry, commerce and the community generally; and
  - (k) preserve, extend and disseminate knowledge and skills; and
  - (m) provide consultative and research services and facilities; and
  - (n) undertake research and consultancies on a commercial basis by using the human and physical resources of the Institute, whether alone or with another institution or body; and
  - (p) establish faculties, schools, departments and other organisational units of the Institute to conduct the educational programs and courses of study or instruction provided by the Institute and the study and research programs undertaken by the Institute; and
  - (q) provide facilities and resources for students; and
  - (r) administer schemes of financial and other assistance for students and persons studying or carrying out research at the Institute, including, in the case of students, financial assistance in the form of loans, grants or other benefits; and
  - (s) provide facilities and resources for the staff to carry out their duties; and
  - (t) provide library and other educational facilities for use by the public subject to the conditions that the Council considers appropriate; and
  - (u) perform any other functions conferred on it by or under this or any other Act.
- (2) The Institute may perform any of its functions outside the Territory.

## **8 Powers of Institute**

- (1) Subject to this Act, the Institute has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions.
- (2) Without limiting subsection (1), the Institute has power to:
- (a) enter into contracts; and
  - (b) create, develop, apply for, obtain and hold intellectual property and enter into agreements or arrangements of a commercial nature in respect of intellectual property on the terms,

including terms as to royalties and lump sum payments, that the Council considers appropriate; and

- (c) purchase, lease or otherwise acquire and hold real or personal property and sell, grant leases of or otherwise dispose of real or personal property; and
- (d) erect buildings; and
- (e) occupy, use, control and manage land or a building owned or leased by the Institute; and
- (f) accept gifts, grants, bequests, devises and assignments made to the Institute, whether on trust or otherwise, and act as trustee of money and other property vested in the Institute on trust; and
- (g) enter into arrangements with other institutions of higher, technical or further education (whether in Australia or elsewhere) or with a State or another Territory for the establishment in the Institute of courses of lectures or studies for degrees, diplomas, certificates or otherwise; and
- (h) confer awards jointly with another educational institution; and
- (j) establish and maintain cultural centres, libraries, laboratories and museums in connection with the operations of the Institute; and
- (k) establish, manage and control halls of residence and other forms of student and other accommodation; and
- (m) employ staff, engage consultants and appoint agents and attorneys; and
- (n) charge for work, services, goods and information done or supplied by the Institute; and
- (p) borrow and invest money; and
- (q) grant loans to and be the guarantor of persons and bodies carrying on activities related to the operations of the Institute on the terms the Council considers appropriate; and
- (r) form partnerships and enter into joint ventures and other arrangements for sharing profits; and

- (s) with the approval of the Treasurer, form or establish or participate in the formation or establishment of companies, whether to be registered in the Territory or elsewhere under section 119A of the Corporations Act 2001.

## **Part 3 Administration of Institute**

### **Division 1 Council**

#### **9 Establishment of Council**

The Council of the Institute is established to conduct the affairs of the Institute.

#### **10 Functions and powers of Council**

- (1) Without limiting section 9, the primary functions of the Council are to:
  - (a) approve the mission and strategic direction of the Institute; and
  - (b) oversee and monitor the academic activities of the Institute, including in particular the performance and outcomes of the activities; and
  - (c) establish policy and procedural principles consistent with legal requirements and community expectations; and
  - (d) oversee the management of the Institute, including by:
    - (i) reviewing the management practices and performances; and
    - (ii) reviewing and monitoring the performance of the Director; and
    - (iii) approving the budget and business plan; and
    - (iv) approving significant commercial activities and assessing risk arising from those activities; and
  - (e) monitor systems of accountability implemented by the Institute; and
  - (f) oversee and monitor the assessment and management of risk across the Institute; and

- (g) establish a system for dealing with grievances of students and staff and publish details of the system and the procedures to be followed; and
  - (h) regularly review delegations under this Act.
- (2) The Council has the powers necessary to perform its functions.
- (3) The Institute is taken to have done a particular act or thing if the act or thing is done:
- (a) by the Council; or
  - (b) by a person or entity in the name of, or on behalf of, the Institute with the express or implied authority of the Council.

## **11 Composition of Council**

- (1) The Council consists of:
- (a) one person:
    - (i) appointed as a member by the Administrator on the nomination of the Minister; and
    - (ii) who, on appointment, becomes the Chairperson; and
  - (b) 4 persons appointed as members by the Administrator on the nomination of the Minister; and
  - (c) one person appointed as a member by the Administrator on the nomination of the CDU Council; and
  - (d) one person from the full-time staff (except the Director or Deputy Director):
    - (i) elected by the full-time staff after a request has been made under section 13(1); and
    - (ii) declared to be a member by the Administrator; and
  - (e) one student, whose usual place of residence is in the Territory:
    - (i) elected by the students after a request has been made under section 13(2); and
    - (ii) declared to be a member by the Administrator; and
  - (f) the Director; and

- (g) the Chief Executive Officer of the Education Agency or the Chief Executive Officer's nominee.
- (2) A person nominated for appointment as the Chairperson of the Council:
  - (a) is, if practicable, to be an indigenous person with appropriate expertise for the appointment; and
  - (b) must not be a member of the staff or a student.
- (3) In relation to the persons nominated for appointment under subsection (1)(b):
  - (a) one must be an indigenous person who has experience in advising government or other service providers about indigenous matters; and
  - (b) one must have specialist professional or vocational knowledge about, or expertise in, delivering education and training, preferably to indigenous people in remote areas of Australia; and
  - (c) one must have demonstrated commercial and financial expertise and experience; and
  - (d) one must have experience, knowledge or expertise, not necessarily of a kind mentioned in paragraphs (a) to (c), that is appropriate for the effective exercise of powers and performance of functions as a member; and
  - (e) at least one must usually reside in the northern region of the Territory; and
  - (f) at least one must usually reside in the southern region of the Territory.

*Note for subsection (3)(a)*

*The appointed Council member mentioned in subsection (3)(a) is also the Chairperson of the Board under section 24B(1)(a).*

- (4) A person who is an appointed Board member must not also be appointed as a member of the Council.
- (5) A person may be reappointed or re-elected as a member of the Council.

- (6) However, a person mentioned in subsection (1)(b) to (e) must not be reappointed or re-elected as a member of the Council if, as a result, the person will hold office for a continuous period exceeding 12 years.

## **12 Notices relating to nomination of Council members**

- (1) For an appointment to the Council under section 11(1)(a) or (b), the Director must give public notice that the Minister is seeking expressions of interest from persons for nomination for the appointment.
- (2) The Director must publish the notice in one or more newspapers circulating throughout the Territory and in any other way the Director considers will give notice to persons who are eligible for appointment.
- (3) The notice must state:
- (a) the way, and the date by which, a person may make an expression of interest; and
  - (b) the eligibility for appointment; and
  - (c) other information the Director considers appropriate.
- (4) For an appointment to the Council under section 11(1)(c), the Director must give the CDU Council a notice stating:
- (a) the CDU Council is requested to nominate a person for the appointment; and
  - (b) the date by which the nomination is to be made; and
  - (c) the nomination must be in writing and given to the Nominations Committee; and
  - (d) other information the Director considers appropriate.

## **13 Request for election of Council member**

- (1) For section 11(1)(d), the Director must request the full-time members of staff to elect a staff member (except the Director or Deputy Director) to be a member of the Council.
- (2) For section 11(1)(e), the Director must request the students of the Institute to elect a student whose usual place of residence is in the Territory to be a member of the Council.

- (3) A request to elect a member of the Council must:
- (a) be in writing; and
  - (b) be made available to the full-time members of staff or the students in the way the Director considers appropriate; and
  - (c) specify the person to whom, and the date by which, notice of the result of the election is to be given; and
  - (d) include any other information required by the By-laws or the Director considers appropriate.

**14 Appointment of Council member on failure to nominate or elect**

- (1) This section applies if there is a failure:
- (a) to nominate a person for appointment as a member of the Council under section 11(1)(a), (b) or (c); or
  - (b) to elect a person as a member of the Council after a request has been made under section 13.
- (2) The vacant office on the Council must be filled by a person appointed by the Administrator on the recommendation of the Minister.
- (3) A person recommended to fill the vacant office:
- (a) must meet the eligibility requirements for holding the office that would apply to the person if he or she had been appointed as a member, or declared to be a member, under section 11; and
  - (b) if appointed to the vacant office – is taken to be an appointed Council member or elected Council member (as appropriate).

**15 Term of office of appointed or elected Council member**

- (1) The Chairperson of the Council holds office for 3 years.
- (2) Each of the other appointed Council members holds office for the period, not exceeding 3 years, specified in the instrument of appointment.
- (3) An elected Council member holds office for one year.

- (4) A person cannot take office as an appointed Council member or elected Council member until the person's appointment or election takes effect:
- (a) on the date the Administrator signs:
    - (i) the instrument of appointment; or
    - (ii) the instrument declaring the person to be a member; or
  - (b) on the later date specified in the instrument.

*Notes for section 15*

- 1 *The term mentioned in subsection (1), (2) or (3) is subject to the earlier vacation of the office for a reason mentioned in section 16.*
- 2 *Section 11(6) has the effect of limiting the total period for which a member mentioned in subsection (2) or (3) may hold office if the member is reappointed or re-elected.*

**16 Vacation of office of Council member**

A member of the Council vacates the member's office if:

- (a) the term of office expires; or
- (b) the member gives the Director a signed notice of resignation; or
- (c) the member ceases to be eligible under section 11 to hold office; or
- (d) the member is absent from 3 consecutive meetings of the Council of which the member has been given reasonable notice and the Council has not approved the absence; or
- (e) the Council resolves the office is vacated because:
  - (i) at least two-thirds of all of the other Council members agree at a meeting that the member, in exercising a power or performing a function of the office, has not complied with section 25; or
  - (ii) the Council is satisfied the member has knowingly contravened a code of conduct applicable to the member; or
  - (iii) the Council is satisfied the member is of unsound mind; or



- (f) the member is found guilty:
  - (i) by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (ii) by a court outside the Territory of an offence which, if committed against a law in force in the Territory, would be punishable by imprisonment for 12 months or more; or
- (g) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
- (h) the member is disqualified from acting as a director of a company or managing corporations under Part 2D.6 of the Corporations Act 2001.

**17 Filling vacancy of elected Council member for less than 6 months**

- (1) If an elected Council member vacates the member's office and there is less than 6 months of the term remaining, the Council must appoint a person to fill the vacancy for the remainder of the term.
- (2) The person appointed:
  - (a) must be:
    - (i) from the full-time staff if the vacating elected Council member was from the full-time staff; or
    - (ii) a student if the vacating elected member was a student; and
  - (b) is taken to be an elected Council member.

**18 Council to elect Deputy Chairperson**

- (1) At the first meeting of the Council in each calendar year, the members of the Council must elect one of the members as the Deputy Chairperson of the Council.
- (2) A member of the Council who is a member of the staff or a student is not eligible for election as the Deputy Chairperson.
- (3) A member of the Council may be re-elected as the Deputy Chairperson.

- (4) The term of office of the Deputy Chairperson is from the election to the office until the election of the Deputy Chairperson at the first meeting of the Council in the next calendar year.
- (5) The member elected as Deputy Chairperson holds the office until:
  - (a) the term of office expires; or
  - (b) the member:
    - (i) gives the Director a signed notice of resignation from the office; or
    - (ii) becomes a staff member or student; or
    - (iii) vacates the member's office on the Council.
- (6) If the office of Deputy Chairperson becomes vacant otherwise than by the expiry of the term of office, the Council must elect one of its members to be the Deputy Chairperson to hold office until the election of the Deputy Chairperson at the first meeting of the Council in the next calendar year.
- (7) The Deputy Chairperson must act in the office of Chairperson if:
  - (a) the Chairperson is unable, for any reason, to exercise the powers or perform the functions of the office; or
  - (b) there is a vacancy in the office.

## **19 Council meetings**

- (1) The Council must hold at least 4 meetings in each calendar year at intervals not exceeding 4 months.
- (2) The Chairperson must call the meetings of the Council that are necessary for the exercise of its powers and the performance of its functions.
- (3) At least one-half of the members of the Council may request the Chairperson to call a meeting.
- (4) The request must:
  - (a) be in writing and signed by all of the members making the request; and
  - (b) specify the matters proposed for deliberation at the meeting.

- (5) If a request is made under subsection (3):
- (a) the Chairperson must call the meeting within 21 days after receiving the request; and
  - (b) the meeting must be held within 30 days after the day on which it is called; and
  - (c) only the matters specified in the request may be deliberated at the meeting.
- (6) At a Council meeting:
- (a) the presiding member is:
    - (i) the Chairperson; or
    - (ii) in the absence of the Chairperson – the Deputy Chairperson; or
    - (iii) in the absence of both the Chairperson and Deputy Chairperson – a member elected by the members present; and
  - (b) the quorum is one-half of the number of members currently holding office; and
  - (c) each member present has one vote; and
  - (d) questions arising are to be decided by a majority of the votes of the members present and, if there is an equal number of votes, the presiding member has a casting vote; and
  - (e) subject to this Act and the By-laws, the Council must decide the procedure to be followed at or in connection with the meeting.
- (7) The Director must not:
- (a) be present during deliberations relating to the Director's performance or the terms of the Director's appointment; or
  - (b) take part in making a decision about either of those matters.
- (8) However, all or part of subsection (7) does not apply if the Council passes a resolution to that effect after deliberating and voting on the matter in the Director's absence.

**20 Council program of induction and professional development**

- (1) The Council must prepare, and give each of its members, a program of induction and professional development.
- (2) The program must include:
  - (a) information about the duties and responsibilities of the members; and
  - (b) provisions that will assist in increasing the expertise of the members in carrying out their duties.
- (3) The Council must review the program at intervals not exceeding 2 years and make appropriate amendments.

**21 Delegation by Council**

- (1) The Council may delegate any of its powers and functions to a person or an entity.
- (2) However, subsection (1) does not apply to the Council's power to make by-laws, rules or a code of conduct.
- (3) The Council must not delegate a power or function to a member of the staff unless it also delegates the power or function to the Director.
- (4) If the Council delegates a power or function to a Council committee, or another entity, and there is a change in the membership of the committee or entity, the delegation continues in force for the newly constituted committee or entity until the Council revokes or varies the delegation.

**Division 2 Council committees**

**22 Nominations Committee**

- (1) The Nominations Committee is established.
- (2) The Nominations Committee consists of the following:
  - (a) the Chairperson of the Council;
  - (b) the appointed Council member to whom section 11(3)(a) applies;
  - (c) the Director;

- (d) the Chief Executive Officer of the Education Agency or the Chief Executive Officer's nominee.

*Note for subsection (2)(b)*

*This member is also the Chairperson of the Board under section 24B(1)(a).*

- (3) The functions of the Nominations Committee are to:
  - (a) consider expressions of interest received from persons in response to notices published under section 12 or 24C; and
  - (b) decide whether a person responding to the notice appears to be eligible:
    - (i) to be nominated for appointment as a member of the Council; or
    - (ii) to be appointed as a member of the Board; and
  - (c) give the Minister a shortlist of the persons considered to be eligible for nomination or appointment.
- (4) The Nominations Committee also has the function of recording the nomination by the CDU Council of a person for appointment as a member of the Council under section 11(1)(c) and forwarding the nomination to the Administrator.

## **23 Other Council committees**

- (1) The Council may establish the committees it thinks necessary for the Council to perform its functions and exercise its powers.
- (2) A Council committee consists of:
  - (a) the Director or a person nominated by the Director; and
  - (b) at least 2 other persons appointed by the Council, one of whom must be a member of the Council.

## **Division 3 Institute Advisory Board**

### **24 Establishment of Board**

The Institute Advisory Board is established.

## **24A Functions and powers of Board**

- (1) The functions of the Board are to:
  - (a) advise, and make recommendation to, the Council about indigenous cultural and social issues that are likely to affect the Institute; and
  - (b) consult with indigenous people, communities and organisations to promote constructive dialogue and engagement between the Institute and indigenous people; and
  - (c) advise the Institute on systemic and structural changes aimed at improving outcomes for indigenous students and clients of the Institute, with particular focus on vocational education and training and higher education; and
  - (d) carry out other activities as requested by the Council.
- (2) If the Council agrees, the Board may engage persons with relevant expertise as consultants.
- (3) The Board has the powers necessary to perform its functions, including the power to establish committees to perform particular functions.
- (4) A committee established by the Board must consist only of members of the Board.
- (5) The funding of the Board must be decided by the Council and met by the Institute.

## **24B Constitution of Board**

- (1) The Board consists of:
  - (a) the member of the Council mentioned in section 11(3)(a), who is the Chairperson of the Board; and
  - (b) 5 indigenous persons appointed as members by the Minister after considering the shortlist given by the Nominations Committee under section 22(3).
- (2) In relation to the appointed Board members:
  - (a) they must represent a broad range of indigenous community interests; and
  - (b) they must have demonstrated knowledge and understanding of cultural and social issues affecting indigenous people; and

- (c) at least one must have experience in indigenous vocational education and training, research or technology; and
  - (d) at least one must have expertise in advising government or other service providers on matters affecting indigenous people; and
  - (e) their usual place of residence must be in the Territory and, as far as possible and subject to the following requirements, they must reside in different regions:
    - (i) at least one must reside in the northern region of the Territory;
    - (ii) at least one must reside in the southern region of the Territory.
- (3) A person who is a member of the Council or staff, or a student, must not be appointed to the Board.

**24C Notice seeking expressions of interest for nomination as Board member**

- (1) For an appointment to the Board under section 24B(1)(b), the Director must give public notice that the Minister is seeking expressions of interest from persons for the appointment.
- (2) The Director must publish the notice in one or more newspapers circulating throughout the Territory and in any other way the Director considers will give notice to persons who are eligible for appointment.
- (3) The notice must state:
  - (a) the way, and the date by which, a person may make an expression of interest; and
  - (b) the qualifications or expertise required for the appointment; and
  - (c) the residential requirements for appointment; and
  - (d) other information the Director considers appropriate.

**24D Term of office of Board member**

- (1) The Chairperson of the Board holds office until the Chairperson vacates the office of a member of the Council.

- (2) Each of the other members of the Board holds office for the period, not exceeding 3 years, specified in the instrument of appointment.
- (3) A member mentioned in subsection (2) cannot take office until the person's appointment takes effect:
  - (a) on the date the Minister signs the instrument of appointment;  
or
  - (b) on the later date specified in the instrument.

#### **24E Vacation of office of Board member**

A member of the Board vacates the member's office if:

- (a) the term of office expires; or
- (b) the member gives the Director a signed notice of resignation;  
or
- (c) the member ceases to be eligible to hold the office because he or she no longer resides in the Territory; or
- (d) the member is absent from 3 consecutive meetings of the Board of which the member has been given reasonable notice and the Board has not approved the absence; or
- (e) the Council resolves the membership is terminated because:
  - (i) at least two-thirds of the all of the Council members agree at a meeting that the Board member, in exercising a power or performing a function of the office, has not complied with section 25; or
  - (ii) the Council is satisfied the member has knowingly contravened a code of conduct applicable to the member; or
  - (iii) the Council is satisfied the member is of unsound mind;  
or
- (f) the member is found guilty:
  - (i) by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (ii) by a court outside the Territory of an offence which, if committed against a law in force in the Territory, would be punishable by imprisonment for 12 months or more;  
or



- (g) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or
- (h) the member is disqualified from acting as a director of a company or managing corporations under Part 2D.6 of the Corporations Act 2001.

#### **24F Board to elect Deputy Chairperson**

- (1) The members of the Board must elect a member as the Deputy Chairperson of the Board.
- (2) The member elected as Deputy Chairperson holds the office until the member:
  - (a) gives the Director a signed notice of resignation from the office; or
  - (b) becomes a staff member or student; or
  - (c) vacates the member's office on the Board.
- (3) The Deputy Chairperson must act in the office of Chairperson if:
  - (a) the Chairperson is unable, for any reason, to exercise the powers or perform the functions of the office; or
  - (b) there is a vacancy in the office.

#### **24G Board meetings**

- (1) The Board must hold at least 4 meetings in each calendar year at intervals not exceeding 4 months.
- (2) The Chairperson of the Board must call the meetings that are necessary for the exercise of the powers and performance of the functions of the Board.
- (3) At least one-half of the members of the Board may request the Chairperson to call a meeting.
- (4) The request must:
  - (a) be in writing and signed by all of the members making the request; and
  - (b) specify the matters proposed for deliberation at the meeting.

- (5) If a request is made under subsection (3):
- (a) the Chairperson must call the meeting within 21 days after receiving the request; and
  - (b) the meeting must be held within 30 days after the day on which it is called; and
  - (c) only the matters specified in the request may be deliberated at the meeting.
- (6) At a meeting:
- (a) the presiding member is:
    - (i) the Chairperson; or
    - (ii) in the absence of the Chairperson – the Deputy Chairperson; or
    - (iii) in the absence of both the Chairperson and Deputy Chairperson – the member elected by the members present; and
  - (b) the quorum is two-thirds of the number of members for the time being holding office; and
  - (c) each member present has one vote; and
  - (d) questions arising are to be decided by a majority of the votes of the members present and, if there is an equal number of votes, the presiding member has a casting vote; and
  - (e) subject to this Act and the By-laws, the Board must decide the procedure to be followed at or in connection with the meeting.

## **Division 4 General matters for Institute entities**

### **25 Duties of member of Institute entity**

- (1) A member of an Institute entity, when exercising a power or performing a function of the office:
- (a) must act always in the best interests of the Institute; and
  - (b) must act in good faith, honestly and for a proper purpose; and
  - (c) must exercise appropriate care and diligence; and

- (d) must not use the office to improperly gain an advantage (either for the member or another person); and
  - (e) must disclose and avoid conflicts of interest.
- (2) If a circumstance mentioned in section 16(f), (g) or (h) applies to a member of the Council, the member must notify the Council within 5 days after the circumstance occurs.
  - (3) If a circumstance mentioned in section 24E(f), (g) or (h) applies to a member of the Board, the member must notify the Council within 5 days after the circumstance occurs.

## **26 Disclosure of interest on becoming member of Institute entity**

- (1) When a person becomes a member of an Institute entity, he or she must disclose any of the following matters relevant to the person:
  - (a) the name and a description of a company, association or other body of which he or she is a member or an officer or by whom he or she is employed;
  - (b) the name and a description of a partnership of which he or she is a partner;
  - (c) the name of a person by whom he or she is employed;
  - (d) other interests he or she has in relation to a specified person or entity that are likely to give rise to a conflict with his or her duties as a member of the Institute entity;
  - (e) any other information prescribed by the rules.
- (2) The disclosure must be made in the manner and form prescribed by the rules.
- (3) In making the disclosure, the person is taken to have given sufficient disclosure of any direct or indirect pecuniary interest of the person in relation to any matter that might be considered at a meeting of the Institute entity or anything that might be done by the entity after the disclosure is made.
- (4) If there is a change to the information disclosed, or the person acquires new interests likely to give rise to a conflict with the person's duties as a member of the Institute entity, the person must vary the disclosure accordingly:
  - (a) in the manner prescribed by the rules; and

- (b) within 30 days after the change occurs or the interest is acquired.
- (5) The disclosure remains effective during the person's first and each successive term of office as a member of the Institute entity.
- (6) The Director must keep a record of all disclosures.

**26A Disclosure of interest on becoming aware of conflict of interest**

- (1) This section applies if a member of an Institute entity becomes aware that he or she has, or may have, a direct or indirect pecuniary interest in:
  - (a) a matter being (or to be) considered by the entity; or
  - (b) something being (or to be) done by the entity.
- (2) The member must, as soon as possible, disclose the nature of the interest or possible interest at a meeting of the entity.
- (3) The member must not:
  - (a) be present during deliberations, or take part in making a decision, in relation to the matter or thing; or
  - (b) perform a function under this Act in relation to the matter or thing.
- (4) However, all or part of subsection (3) does not apply if the Institute entity passes a resolution to that effect after deliberating and voting on the matter in the member's absence.

**26B Validity of procedures and actions**

A procedure of an Institute entity, or a thing done by the entity, is not invalid solely because of:

- (a) a defect in any of the following:
  - (i) the nomination for appointment or the appointment of a person as a member of the entity;
  - (ii) the election of a person as a member of the entity or the declaration of the election;
  - (iii) a delegation by or to the entity;
  - (iv) the convening or conduct of a meeting of the entity; or
- (b) a vacancy in the membership of the entity; or

- (c) a person purporting to be a member of the entity not being a member; or
- (d) the failure by a member of the entity to make the disclosure mentioned in section 26 or 26A.

## **Division 5 Director and Deputy Director of Institute**

### **27 Director**

- (1) The Council must appoint a person to be the Director of the Institute.
- (2) The Director holds office on the terms specified in writing by the Council.
- (3) The Director is the chief executive officer of the Institute and is responsible to the Council for the management and administration of the Institute.
- (4) The Director also has the powers and functions prescribed by this Act or the By-laws.

### **28 Deputy Director**

- (1) The Council must appoint a person to be the Deputy Director of the Institute.
- (2) The Deputy Director holds office on the terms specified in writing by the Council.
- (3) The Deputy Director must:
  - (a) act as the Director during a vacancy in the office; and
  - (b) exercise the powers and perform the functions of the Director when the Director is absent from duty or the Territory or is otherwise unable to exercise the powers and perform the functions.
- (4) The Deputy Director also has the powers and functions prescribed by the By-laws.

### **29 Delegation by Director**

- (1) The Director may, in writing, delegate to a person any of the Director's powers and functions under this Act.
- (2) Subsection (1) does not apply to the Director's functions as a member of the Council.

**30            Validity of actions**

The exercise of a power or performance of a function by the Director, Deputy Director or a delegate of the Director is not invalid solely because of a defect in:

- (a) the appointment of the Director or Deputy Director; or
- (b) the delegation.

**Part 4                    Degrees and other awards**

**31            Degrees and awards of Institute**

- (1) The Council may, in relation to the education and training it provides:
  - (a) confer degrees of the Institute; and
  - (b) grant diplomas, certificates or other awards of the Institute.
- (2) For the purpose of enabling students to obtain degrees and other awards of the Institute, the Council must facilitate course articulation and credit transfer between vocational education and training and higher education provided by the Institute and between programs and courses provided by the Institute and any university or other institution.
- (3) The Council may grant honorary degrees and other distinctions as it considers appropriate.

**32            Degrees and awards of other bodies**

The Council may arrange for instruction to be given to students for the purpose of completing the requirements for a degree or other award of any university or other institution with which the Council has an agreement to do so.

**Part 5                    Staff etc.**

**33            Appointment of staff**

Subject to this Act and the By-laws, the Council may, on the terms and conditions it considers appropriate, appoint the staff it thinks necessary for the purposes of the Institute.

**34 Consultants may be engaged**

The Council may engage consultants and make the arrangements for the provision of advice and services as it thinks necessary for the purposes of the Institute.

**Part 6 Property, finance, audit and annual reports**

**35 Financial year**

- (1) The financial year of the Institute is a 12 month period ending on 31 December.
- (2) In this Part, *financial year* means the financial year of the Institute.

**36 Fees**

- (1) Subject to this section, the Council may determine the fees payable to the Institute:
  - (a) for the educational programs and courses of study or instruction offered at the Institution; and
  - (b) for admission to examinations conducted by the Institute; and
  - (c) in relation to any other services, facilities or privileges offered by the Institute.
- (2) A student to whom the Institute has granted a scholarship or bursary in accordance with the By-laws is exempt from payment of fees to the extent that the scholarship or bursary provides for the exemption.
- (3) The Council may exempt a student from the payment of the whole or a part of a fee payable by the student if it considers that the payment of the whole or part of the fee would cause substantial hardship to the student.
- (4) The Council may defer the date on or by which a fee is due and payable by a student if it considers that the payment of the fee on or by that date would cause substantial hardship to the student.

**37 ADI accounts**

- (1) Subject to this Part, the Council may open and maintain an account or accounts with an ADI or the Territory Insurance Office as it considers appropriate for the Institute.

- (2) All money received by the Institute is to be paid into an account maintained under subsection (1).
- (3) Subject to the terms of a trust or a condition under which money is acquired by the Institute, money in the accounts of the Institute is only to be applied:
  - (a) by or with the authority of the Council; and
  - (b) for the purposes of the Institute.

### **38 Proper accounts to be kept etc.**

- (1) The Council must ensure that:
  - (a) proper accounts and records of the transactions and affairs of the Institute are kept; and
  - (b) there are adequate controls over the incurring of liabilities by the Institute; and
  - (c) all payments out of the money of the Institute are correctly made and properly authorised; and
  - (d) adequate control is maintained over the property of or in the custody, control and management of the Institute.
- (2) The Council must show separately in its accounts and records the income and expenditure that is properly attributable to vocational education and training.

### **39 Gifts etc. and trust funds**

- (1) The Institute may agree to and carry out the conditions of a gift, grant, bequest, devise, purchase, lease or any other means of conveyance or transfer by which it acquires, holds and uses property for its purposes.
- (2) The Council may create and administer a trust fund or trust funds for any purpose relating to the performance of its functions that it considers appropriate, including for the purpose of acquiring or holding property.

### **40 Variation of terms of trust or gift**

- (1) In this section:

**approved scheme** means a scheme or variation of an approved scheme approved by the Administrator under subsection (4).



**scheme** means a proposal by which a purpose for which property or the income of property held by the Institute is to be applied may be substituted for another purpose.

- (2) If the Institute holds property on terms requiring the property or the income from the property to be applied for a specified purpose and one of the following circumstances applies:
- (a) the purpose has been effected;
  - (b) the purpose has ceased to exist;
  - (c) the purpose has been adequately provided for by other means;
  - (d) the purpose is uncertain or cannot be identified or is not sufficiently defined;
  - (e) it becomes impossible or impracticable or inexpedient to carry out the purpose;
  - (f) the property or income derived from the property is inadequate to carry out the purpose;

the Council may, subject to this section, prepare a scheme or a variation of an approved scheme by which the property or a part or residue of the property is to be held on terms requiring the property or the income from the property to be applied for another purpose designated in the scheme or variation.

- (3) In selecting a purpose to be designated in a scheme or variation of an approved scheme, the Council must have a preference for a purpose which, in its opinion, is:
- (a) as similar as reasonably possible to the purpose or purposes for which the property concerned is held by the Institute; and
  - (b) relevant to the functions of the Institute.
- (4) The Council must submit the scheme or variation of an approved scheme to the Administrator and, on receipt of the scheme or variation, the Administrator may:
- (a) by *Gazette* notice:
    - (i) approve the scheme or variation; or
    - (ii) approve the scheme or variation with the modifications the Administrator considers appropriate; or

- (b) by notice in writing to the Council, refuse to approve the scheme or variation.
- (5) If the Administrator approves a scheme or variation under subsection (4), the property, part or residue the subject of the scheme or variation is, in accordance with the scheme or variation, to be diverted from the purpose or purposes for which it was held immediately before the approval and held for the purpose or purposes designated in the scheme or variation.
- (6) On the publication of the Administrator's approval in the *Gazette*, judicial notice is to be taken of the scheme or variation the subject of the approval.
- (7) An approved scheme is not to be invalidated or otherwise prejudiced by reason only that a purpose other than the purpose designated in the approved scheme may have been more properly selected by the Council.
- (8) The powers conferred by this section are in addition to any other power or right that the Institute may lawfully exercise in relation to property it holds on trust or acquires and holds subject to a condition.

#### **41 Financial accommodation**

- (1) For the purpose of providing financial accommodation for enabling the Institute to perform its functions, the Council may obtain advances by way of a loan:
  - (a) from the Treasurer; or
  - (b) on overdraft from an ADI; or
  - (c) subject to subsection (2), from any other person or body on the security, at the rate of interest and subject to any other terms and conditions as the Council agrees to.
- (2) The Council must not obtain a loan mentioned in subsection (1)(c) unless:
  - (a) the Council has the written approval of the Treasurer to do so; and
  - (b) the terms and conditions of the loan comply with the conditions of the Treasurer's approval.
- (3) The Council must provide the Treasurer with any information he or she requires to determine whether to approve the Council obtaining the loan.

**42 Investment**

- (1) The Council may invest the trust money or other money of the Institute held by or in the custody, management or control of the Institute.
- (2) For the purposes of subsection (1), the Council may establish common funds for the collective investment of the money.
- (3) The Council may, without liability for breach of trust, bring into or withdraw from the common funds the whole or a part of trust money or other money held by or in the custody, management or control of the Institute.
- (4) Subject to subsections (5) and (6), the Council must periodically distribute the income of each common fund among the funds participating in the common fund having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.
- (5) If money received by the Council to be expended for a stated purpose has been brought into an investment fund but cannot, or will not immediately, be expended for that purpose, the Council may pay into the general funds of the Institute the whole or a part of the part of the income of the investment fund that is attributed to the participation of the money in the fund and which is not required for that purpose.
- (6) The Council may, as it considers appropriate:
  - (a) add a portion of the income of an investment fund to the capital of a common fund; or
  - (b) use a portion of that income to establish or augment an investment fund or a common fund as a provision against capital depreciation or reduction of income.
- (7) The money of the Institute, including money held on trust or subject to a condition or forming part of a common fund, is not to be invested by the Council unless invested in a class of investment approved by the Treasurer.
- (8) The powers conferred on the Council by this section, or by a by-law relating to investment of property, are not to be exercised by the Council in relation to a trust fund or other money if the exercise of the powers would:
  - (a) be inconsistent with the trust; or

- (b) constitute a breach of a condition under which the fund or money was acquired.

#### **43 Annual budget and expenditure**

- (1) In each financial year, the Council must:
  - (a) adopt a budget for the funds of the Institute, except those to which paragraphs (d) and (e) relate, for the next financial year; and
  - (b) approve any amendments to the budget for the current financial year; and
  - (c) control the expenditure of the Institute during the current financial year so that it conforms as nearly as possible to the budget (as amended) for the financial year; and
  - (d) review the funds available to the Institute by way of bequest, donation or special grant and the expenditure of those funds; and
  - (e) subject to the terms of a trust and before any expenditure is made, approve the proposed disposition of the funds mentioned in paragraph (d).
- (2) As soon as reasonably possible after adopting or amending a budget under subsection (1)(a) or (b), the Council must forward a copy of the budget or amendment to the Treasurer.

#### **44 Provision of financial information to Treasurer**

- (1) The Treasurer may at any time request the Director to provide the Treasurer with the information that, in the opinion of the Treasurer, is necessary to enable him or her to accurately assess the financial affairs of the Institute, including details of:
  - (a) financial investments in corporations, trusts and joint ventures; and
  - (b) contingent liabilities; and
  - (c) guarantees.
- (2) The Director must comply with the Treasurer's request.

**45 Annual report**

- (1) The Council must, at the end of each financial year, prepare a report on the operations of the Institute during the financial year and forward the report to the Minister.
- (2) The Council must forward the report:
  - (a) within 6 months after the end of the financial year; or
  - (b) within a longer period approved by the Minister.
- (3) The report must include details of:
  - (a) the achievements and outcomes in relation to the mission and strategic direction of the Institute; and
  - (b) the risk management within the Institute.

**46 Audit**

- (1) The Director must, at the end of each financial year, prepare a financial statement in respect of the financial year.
- (2) The financial statement is to be:
  - (a) in respect of the operations of the Institute or the particular functions and activities of the Institute that the Treasurer specifies in writing to the Institute; and
  - (b) prepared in a form approved by the Treasurer; and
  - (c) prepared:
    - (i) within 3 months after the end of the financial year; or
    - (ii) within any longer period approved by the Treasurer.
- (3) The Director must forward a copy of the financial statement to the Minister and the Auditor-General.
- (4) The Auditor-General must audit the financial statement and report on the statement to the Minister:
  - (a) within 3 months after receiving the statement; or
  - (b) within any longer period determined by the Administrator.
- (5) The Auditor-General must forward a copy of his or her report to the Director.

**47 Reports to be laid before Legislative Assembly**

The Minister must lay:

- (a) the report prepared under section 45(1); and
- (b) the financial statement and the report of the Auditor-General prepared under section 46;

before the Legislative Assembly within 6 sitting days of the Assembly after the last of the reports is received by the Minister.

**48 *Financial Management Act* does not apply to the Institute**

The *Financial Management Act* does not apply to the Institute.

**Part 7 By-laws, rules and codes of conduct****49 Power to make by-laws**

- (1) The Council may make by-laws, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Council may make by-laws to do any of the following:
  - (a) provide for the use and custody of the common seal of the Institute and the performance of specified functions of the Institute without the common seal;
  - (b) prescribe matters relating to the election of members of the Council, including the qualifications of people electing the members and the procedures for enrolling to vote, conducting ballots, counting votes and declaring the result;
  - (c) prescribe the manner and time of convening, holding and adjourning meetings of the Council or Board and the manner of voting at the meetings and conducting and recording the business of the meetings;
  - (d) prescribe the powers and duties of the person presiding at a meeting of the Council or Board;

- (e) provide for the appointment of members of Council committees established under section 23(1) and the quorum, powers and duties of the committees;
- (f) prescribe powers and functions of the Director and Deputy Director;
- (g) provide for the enrolment of students;
- (h) provide for the admission of students of other universities or educational establishments, or persons who have completed training courses for the purposes of professional associations or practical work, to a corresponding status in the Institute with or without examination;
- (j) provide for the admission of graduates of other universities or educational establishments to a corresponding degree or diploma of the Institute;
- (k) provide for the promotion, development and organisation of the teaching and research of the Institute;
- (m) provide for the accrediting of educational and training courses and programs offered by the Institute and the conferring of degrees, diplomas, certificates and honours and honorary and other awards by the Institute;
- (n) provide for the granting of fellowships, scholarships, exhibitions, bursaries and prizes by the Institute;
- (p) provide for the establishment, management and control of cultural centres, libraries and museums by the Institute or in connection with the operations of the Institute;
- (q) provide for the establishment, management and control of halls of residence and other accommodation provided by the Institute;
- (r) prescribe the manner by which the Institute is to affiliate or otherwise associate with an educational or research establishment, whether in the Territory or elsewhere;
- (s) provide for the control and investment of the property of or held by or in the custody, management or control of the Institute, including property held on trust or subject to a condition;
- (t) provide for the use of personal property of or under the control of the Institute and its protection from damage or misuse;

- (u) regulate or prohibit access to and use of the land and buildings of or under the control or management of the Institute and the conduct of persons and the presence, use and removal of vehicles and animals on the land or in or near the buildings and the impounding or disposal of those vehicles or animals;
- (w) provide for the appointment, promotion, transfer, resignation and retirement of staff and prescribe the terms and conditions of appointment of staff;
- (x) prescribe procedures in respect of the inability of staff to discharge duties, breaches of discipline by staff and grievances of staff;
- (y) provide for the recognition of the status of graduates;
- (z) regulate or prohibit the conduct of students and prescribe procedures in respect of breaches of discipline by students, including the prescribing of disciplinary offences and providing for the exercise of disciplinary powers by a specified person;
- (za) provide for the manner of making and publishing rules by the Council, including the authorisation by the Council of a person to sign them, and for the enforcement of those rules;
- (zb) prescribe the manner of making and publishing a code of conduct by the Council and for the enforcement of a code of conduct;
- (zc) prescribe the manner by which the Council may suspend the operation of a by-law, rule or code of conduct;
- (zd) prescribe the method of collection of the fees determined by the Council under section 36;
- (ze) provide for the establishment of a campus, annex or community study centre of the Institute;
- (zf) provide for appeals against decisions made under the Act, the By-laws or the rules, including the procedures for the lodgement, conduct and determination of an appeal and the awarding of costs;
- (zg) prescribe the proof that is necessary or sufficient to establish a matter relevant to an offence against the By-laws or rules;
- (zh) provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against the By-laws or rules;



- (zj) provide for the service of notices on persons alleged to have infringed the By-laws or rules and the particulars to be included in those notices;
  - (zk) provide for maximum penalties of, or an amount equal to, 8 penalty units for an offence against the By-laws;
  - (zm) designate an offence against the By-laws to be a regulatory offence.
- (3) A by-law may do any of the following:
- (a) authorise a specified person or body or specified class of persons or bodies to do an act or thing;
  - (b) provide that an act or thing is to be done with the approval of a specified person or body or a member of a specified class of persons or bodies;
  - (c) confer a discretionary authority or power of inspection on a specified person or body or a specified class of persons or bodies.
- (4) A by-law may provide for matters of prohibition or regulation, either absolutely or in relation to a class of act, matter or thing or a situation or other circumstance.
- (5) A by-law may authorise the exercise of the Institute's power to make rules in respect of a matter specified in the by-law.

## **50 By-laws relating to vehicles**

- (1) Without limiting section 49, a by-law may do any of the following:
- (a) create offences in relation to the use of motor vehicles including offences for any of the following:
    - (i) bringing a vehicle onto or parking or standing a vehicle on a site in breach of a by-law;
    - (ii) driving a vehicle on a site in breach of a by-law;
    - (iii) driving a vehicle on a site at a speed in excess of a speed that, in relation to the site, is prescribed, determined by a method prescribed or fixed by a person authorised by a by-law;
    - (iv) driving a vehicle on a site contrary to a direction, whether given by a traffic control device on the site or by a person authorised by a by-law to do so;

- (v) doing any other prescribed act on a site;
- (b) in relation to an offence created under paragraph (a) – provide that the person who was in charge of the vehicle at the material time or the owner of the vehicle (whether or not in charge of the vehicle at the material time) may be found guilty of committing the offence;
- (c) define who is the owner of a vehicle for the purposes of the By-laws;
- (d) provide for the removal or disposal of a vehicle that is:
  - (i) parked or left standing on a site in such a position as to obstruct, interfere with or cause danger to other vehicles on the site or to users of the site; or
  - (ii) apparently abandoned on a site.
- (2) A by-law mentioned in subsection (1)(b) is not to be construed so that both the owner of a vehicle and the person in charge of it at the time the offence is committed are found guilty of the offence.
- (3) In this section, **site** means land or a building of or in the control or management of the Institute or a part of that land or building.

## **51 Rules**

- (1) The Council may, in the manner prescribed by the By-laws, make rules for carrying into effect any of the provisions of this Act or the By-laws.
- (2) The Council may not make a rule that is inconsistent with this Act or the By-laws.
- (3) The rules may provide for maximum penalties of, or an amount equal to, 0.8 penalty unit for an offence against the rules.
- (4) Rules are to take effect from the date of their publication or, where a later date is provided for in the rules, from that later date.

## **52 Codes of conduct**

The Council may, in the manner prescribed by the By-laws, make codes of conduct in relation to the activities and conduct of its members and the staff, students and members of the Board.

**53 Recovery of penalties imposed under by-laws and rules**

- (1) A penalty imposed under a by-law or rule is a debt due and payable to the Institute by the person on whom it is imposed.
- (2) In proceedings for the recovery of a penalty mentioned in subsection (1), a certificate signed by the Director specifying:
  - (a) the person or body by whom the penalty was imposed; and
  - (b) the date on which it was imposed; and
  - (c) the amount of the penalty;is evidence of those matters.

**54 Application of by-laws, rules and codes of conduct**

- (1) A by-law, rule or code of conduct may be made to:
  - (a) apply to all or particular operations of the Institute; or
  - (b) be in force within:
    - (i) all campuses, annexes and community study centres of the Institute and other land and buildings of or in the control or management of the Institute; or
    - (ii) a particular campus, annex or community study centre of the Institute or other area of land or a building or part of a building of or in the control or management of the Institute.
- (2) The Council may, in the manner prescribed by the By-laws, suspend the operation of a by-law, rule or code of conduct:
  - (a) for a specified period; or
  - (b) on a specified campus, annex or community study centre or other specified land or building of or in the control or management of the Institute; or
  - (c) to a specified class of persons or circumstances.

**55 Proof of by-laws, rules and codes of conduct**

- (1) In any proceedings, the production of:
  - (a) a copy of a by-law, rule or code of conduct purporting to be certified as a true copy of the by-law, rule or code of conduct and signed by the Director; and

- (b) the minutes of the meeting of the Council at which the Council made the by-law, rule or code of conduct or a copy of a document purporting to be a true copy of or an extract from the minutes of that meeting and signed by the Chairperson; and
- (c) in relation to a by-law – the *Gazette* in which notification of the making of the by-law is published;

is conclusive evidence of the by-law, rule or code of conduct having been made and the contents of the by-law, rule or code of conduct.

(2) In any proceedings, the production of:

- (a) the minutes of the meeting of the Council at which the Council suspended the operation of a by-law, rule or code of conduct under section 54(2) or a copy of a document purporting to be a true copy of or an extract from the minutes of that meeting and signed by the Chairperson; and
- (b) a copy of any notice required by the By-laws to be given in relation to the suspension of the by-law, rule or code of conduct;

is conclusive evidence of the suspension of the by-law, rule or code of conduct.

## **56 Application of *Interpretation Act* to By-laws and rules**

- (1) Section 57 of the *Interpretation Act* does not apply to the By-laws or rules.
- (2) Section 63 of the *Interpretation Act* does not apply to rules.

## **Part 8 Miscellaneous matters**

### **57 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) a member of the Council;
  - (b) a member of a Council committee;
  - (c) a member of the Board.

- (2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Institute, the Council, a Council committee or the Board, in the exercise of a power or performance of a function under this Act.
- (3) Subsections (1) and (2) do not affect any liability the Institute would, apart from those subsections, have for the act or omission.
- (4) In this section:

***exercise***, of a power, includes the purported exercise of the power.

***performance***, of a function, includes the purported performance of the function.

## **58 Form and execution of contracts and other documents of Institute**

- (1) A deed, instrument, contract or agreement relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Institute in writing under its common seal.
- (2) An instrument, contract or agreement relating to any property or matter that, if made by or between individuals, would be required to be in writing signed by the parties to it may be made or entered into on behalf of the Institute in writing by a person acting under the authority, express or implied, of the Council.
- (3) A contract relating to any property or matter that, if made between individuals, would by law be valid although made or entered into by parole only and not reduced to writing may be made on behalf of the Institute by a person acting under the authority, express or implied, of the Council.
- (4) A contract entered into or an instrument, contract or agreement signed in relation to any property or obligation of the Institute is to be taken to have been entered into or signed with the express authority of the Council if it is entered into or signed in accordance with a resolution of the Council.

## **59 Savings and transitional matters for *Batchelor Institute of Indigenous Tertiary Education Act 1999***

- (1) The savings and transitional provisions are set out in the Schedule.
- (2) This Act is to be construed, with the necessary changes, to give effect to the Schedule.

**Part 9 Transitional matters for Batchelor Institute of  
Indigenous Tertiary Education Amendment  
Act 2012**

**Division 1 Preliminary and general matters**

**60 Definitions**

In this Part:

**commencement day** means the day on which this Part commences.

**establishment day**, see section 68(1).

**interim Council** means the interim Council constituted under section 64.

**interim period** means the period from the commencement day to the day before the establishment day.

**new Council** means the Council constituted and established under Division 3.

**repealed**, in relation to a specified provision of this Act, means the provision as in force immediately before the commencement day.

**61 Continuation of Council By-laws, rules, codes, resolutions and actions**

- (1) By-laws, rules, codes of conduct and resolutions made by a Council constituted under repealed Part 3 and in force immediately before the commencement day continue in force as if they had been made by the interim Council.
- (2) Anything done or omitted to be done before the commencement day by a Council constituted under repealed Part 3 is, during the interim period, taken to have been done or omitted to be done by the interim Council.

**62 Continuation of interim Council By-laws, rules, codes, resolutions and actions**

- (1) By-laws, rules, codes of conduct and resolutions made by the interim Council that are in force immediately before the establishment day continue in force as if they had been made by the new Council.

- (2) Anything done or omitted to be done by the interim Council during the interim period is taken to have been done or omitted to be done by the new Council.
- (3) A reference in subsection (1) to By-laws, rules, codes of conduct and resolutions made by the interim Council is a reference to By-laws, rules, codes of conduct and resolutions:
  - (a) made by the interim Council during the interim period; and
  - (b) continued in force as mentioned in section 61(1).
- (4) A reference in subsection (2) to anything done or omitted to be done by the interim Council is a reference to:
  - (a) anything done or omitted to be done by the interim Council during the interim period; and
  - (b) anything taken to have been done or omitted to be done as mentioned in section 61(2).

### **63 Director and Deputy Director**

The following continue in force on and after the commencement day:

- (a) appointments of the Director and Deputy Director under repealed sections 27 and 28;
- (b) the terms and conditions of those appointments;
- (c) delegations under repealed section 29 other than delegations of powers or functions conferred or imposed under repealed Part 3.

## **Division 2 Interim Council and interim Nominations Committee**

### **64 Interim Council to operate in interim period**

- (1) During the interim period, sections 9 and 10 apply as if a reference in those sections to the Council were a reference to the interim Council.
- (2) The interim Council consists of 5 persons appointed in writing by the Minister, one of whom is to be appointed as the Chairperson of the interim Council.

- (3) The Minister must be satisfied that each person appointed under subsection (2) has the appropriate qualifications or expertise for membership of the interim Council.
- (4) The interim Council may exercise the powers and perform the functions of the Council under this Act during the interim period as if it were the Council constituted under section 11.
- (5) A member of the interim Council has the same powers, functions, responsibilities, duties and protections under this Act as a member of the Council constituted under section 11.

## **65 Interim Nominations Committee**

- (1) During the interim period, this Act applies as if a reference in this Act to the Nominations Committee were a reference to the interim Nominations Committee.
- (2) The interim Nominations Committee consists of the following persons:
  - (a) the Chairperson of the interim Council;
  - (b) the Director;
  - (c) the Chief Executive Officer of the Education Agency or the Chief Executive Officer's nominee;
  - (d) an indigenous person appointed by the Minister.
- (3) The Minister must be satisfied that the person appointed under subsection (2)(d) has appropriate qualifications or expertise to carry out the functions of a member of the interim Nominations Committee.

## **Division 3 New Council**

### **66 Appointment and election of members of new Council**

- (1) The new Council must be constituted in accordance with section 11.
- (2) For constituting the new Council, the Director must give notice under section 12 and make the requests under section 13 within 1 calendar month after the commencement day.



- (3) Subject to this Division, Part 3 applies in relation the following matters as if a reference in Part 3 to the Council were a reference to the new Council:
- (a) the nomination and appointment of a person as a member of the new Council;
  - (b) the election and declaration of a person to be a member of the new Council;
  - (c) the appointment of a person as a member of the new Council if there is a failure to nominate or elect a member.

#### **67 Term of appointment of new Council members**

- (1) Section 15 applies in relation to the term of appointment of the members of the new Council except:
- (a) the member appointed under section 11(1)(b) to whom section 11(3)(b) applies; and
  - (b) the member appointed under section 11(1)(b) to whom section 11(3)(c) applies; and
  - (c) the member appointed under section 11(1)(b) to whom section 11(3)(d) applies; and
  - (d) the member appointed under section 11(1)(c).
- (2) A member of the new Council mentioned in subsection (1) is appointed for a term of 2 years.

#### **68 Establishment day**

- (1) The new Council is established as the Council under section 9 on the day (the **establishment day**) on which all of the appointments and declarations of persons as members of the new Council have taken effect, and all of the members of the new Council can take office, as mentioned in section 15(4).
- (2) The new Council must hold its first meeting no later than 30 days after the establishment day.

### **Division 4 Board**

#### **69 Expressions of interest for appointment to Board**

The Director must give notice under section 24C within 1 calendar month after the commencement day.

**70 First meeting of Board**

The Board must hold its first meeting no later than 30 days after the day on which all of the appointments of the persons mentioned in section 24B(1)(b) have taken effect, and all of the members of the Board can take office, as mentioned in section 24D(3).

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**Schedule Savings and transitional provisions**

section 59

**1. References to Batchelor College**

Subject to the appearance of a contrary intention, a reference to the Batchelor College in an Act, an instrument of a legal or administrative character or any other document is, on the commencement of this Act, to be taken to be and to have effect as if it were a reference to the Institute.

**2. Council, Chairperson and Deputy Chairperson**

(1) On the commencement of this Act, the council of Batchelor College is the Council of the Institute and continues, subject to this Act, as the Council until the first meeting of the first Council.

(2) On the commencement of this Act:

(a) the members of the council of Batchelor College in office immediately before that commencement are the members of the Council and continue, subject to this Act, to hold office as members of the Council; and

(b) the chairman of the council of Batchelor College immediately before that commencement is the Chairperson of the Council and continues, subject to this Act, to hold office as the Chairperson of the Council,

until the first meeting of the first Council.

(3) On the commencement of this Act, the vice-chairman of the council of Batchelor College immediately before that commencement is the Deputy Chairperson of the Council and continues subject to this Act to hold office as the Deputy Chairperson until the election of the Deputy Chairperson at the first meeting of the first Council.

(4) The first meeting of the first Council is to be held not later than 31 December 1999.

**3. Assets and liabilities, including contracts generally**

(1) On the commencement of this Act:

(a) all real and personal property and all rights and interests in and management and control of that property that, immediately before that commencement, was vested in or belonged to Batchelor College, by virtue of this Act and

without further assurance, vest in and belong to the Institute;

- (b) all licences held by Batchelor College immediately before that commencement become, subject to any other Act (including any Act of the Commonwealth), licences held by the Institute;
- (c) all money and liquidated and unliquidated claims that were, immediately before that commencement, payable to or recoverable by Batchelor College are money and liquidated and unliquidated claims payable to or recoverable by the Institute;
- (d) all proceedings pending immediately before that commencement at the suit of Batchelor College are to be taken to be proceedings pending at the suit of the Institute;
- (e) all proceedings pending immediately before that commencement against Batchelor College are to be taken to be proceedings pending against the Institute;
- (f) all contracts, agreements, arrangements and undertakings (other than a contract of employment or a contract, agreement, arrangement or undertaking entered into with a student in respect of the provision of a program or course of study or instruction) entered into with Batchelor College and in force immediately before that commencement are to be taken to be contracts, agreements, arrangements and undertakings entered into with the Institute;
- (g) all securities lawfully given to or by Batchelor College and in force immediately before that commencement are to be taken to be securities given to or by the Institute;
- (h) the Institute may, without limiting the remedies or powers that are available to it, pursue the same remedies for the recovery of money and claims and the prosecution of offences as Batchelor College would, but for this Act, have had available to it;
- (j) the Institute may enforce and realise any security or charge in favour of Batchelor College that existed immediately before that commencement and may exercise any powers conferred on Batchelor College by the security or charge as if the security or charge were a security or charge in favour of the Institute;

- (k) all debts, money and claims (whether liquidated or unliquidated) that, immediately before that commencement, were due or payable by Batchelor College or recoverable against Batchelor College are due or payable by or recoverable against the Institute; and
  - (m) all liquidated and unliquidated claims for which Batchelor College would, but for this Act, have been liable are liquidated and unliquidated claims for which the Institute is liable.
- (2) No attornment to the Institute is required by a lessee of Batchelor College.
  - (3) On the lodgement of this Act with the Registrar-General or any other officer controlling a register or other record of rights and interests in property, the Registrar-General or officer must, in respect of the property which was vested in Batchelor College or in which Batchelor College held an interest immediately before the commencement of this Act, make the entries in the relevant registers or records that are necessary to give effect to this clause.
  - (4) No duty, fee or other charge is payable by the Institute in relation to the transfer or vesting of property in the Institute by virtue of this Act.

#### **4. Staff**

- (1) On the commencement of this Act, a person who immediately before the commencement of this Act was an employee within the meaning of the *Public Sector Employment and Management Act* (other than a casual employee) at Batchelor College and who:
  - (a) presents himself or herself for work at the Institute on the first working day after that commencement;
  - (b) is on leave on the first working day after that commencement but presents himself or herself for work at the Institute on the first day after the expiry of that leave; or
  - (c) has in the opinion of the Director (whose decision in the matter is final) a reasonable excuse for not presenting himself or herself for work in accordance with paragraph (a) or (b) but does so by a day determined by the Director,

is a member of the staff at the Institute unless and until (but not later than 12 months after that commencement) he or she decides to remain employed as an employee within the meaning of the *Public Sector Employment and Management Act*.

- (2) A person who under subclause (1) is a member of the staff of the Institute:
- (a) is entitled to be paid salary or wages, allowances and other benefits at rates equal to, and on the same terms and conditions as, those that were payable to him or her immediately before the commencement of this Act until his or her salary, wages, allowances or other benefits is or are varied or altered by an award of a competent tribunal or an industrial agreement or by any other lawful means or, subject to such an award or agreement or other lawful means, by a decision of the Council;
  - (b) continues to be employed on the same conditions as the conditions of his or her employment under the *Public Sector Employment and Management Act* or the Child Care Industry (Northern Territory) Award 1993 (as amended) immediately before the commencement of this Act (including any period of probation or any approval given under section 61 of that Act to engage in paid employment outside his or her employment at Batchelor College) until varied or altered by an award of a competent tribunal or an industrial agreement or by any other lawful means or, subject to such an award or agreement or other lawful means, by a decision of the Council;
  - (c) retains the position held by him or her at Batchelor College immediately before that commencement; and
  - (d) retains all his or her existing and accruing rights arising from his or her employment under the *Public Sector Employment and Management Act* or the Child Care Industry (Northern Territory) Award 1993 (as amended) as if he or she continued to be employed under that Act, and for that purpose the person's service under that Act is to be taken to be service with the Institute.
- (3) If the contract of employment of a person who under subclause (1) is a member of the staff of the Institute is, as in force immediately before the commencement of this Act, expressed to expire on a specified or ascertainable date that occurs after that commencement, the person is to be taken to be a member of the staff of the Institute under a contract of employment that expires on the same date.

## (4) All:

- (a) rights and proceedings under Parts 7, 8 or 9 of the *Public Sector Employment and Management Act* or arising because of the Child Care Industry (Northern Territory) Award 1993 (as from time to time in force) of or in respect of a person who under subclause (1) is a member of the staff of the Institute that exist and are pending or have commenced immediately before the commencement of this Act;
- (b) obligations, duties, liabilities or remedies under the *Public Sector Employment or Management Act* or arising because of the award in respect of those rights and proceedings; and
- (c) orders, directions or decisions made in respect of those rights or proceedings under the *Public Sector Employment and Management Act* or because of the award,

continue unaffected and may be dealt with under the *Public Sector Employment and Management Act* or the award as if this Act had not commenced, and this Act and the By-laws apply to and in relation to those orders, directions or decisions with the necessary changes.

## (5) Any suspension, instruction, direction or other action that:

- (a) was taken or given under the *Public Sector Employment and Management Act* or because of the Child Care Industry (Northern Territory) Award 1993 (as from time to time in force) to or in relation to a person who under subclause (1) is a member of the staff of the Institute; and
- (b) is in force immediately before the commencement of this Act,

continues to have effect as if this Act had not commenced, and this Act and the By-laws apply to and in relation to the suspension, instruction, direction or other action with the necessary changes.

- (6) A person who under subclause (1) is a member of the staff of the Institute is not entitled to claim benefits under both this Act and the *Public Sector Employment and Management Act* in respect of the same period of service.

**5. Students**

- (1) Subject to the By-laws and rules, each person who is, immediately before the commencement of this Act, enrolled in a program or course as a student of Batchelor College is on that commencement a student of the Institute who is enrolled in the program or course offered by the Institute that is substantially the same in content as

the course offered by Batchelor College.

- (2) The Institute must, on the commencement of this Act, provide the educational programs or courses that are necessary to replace those offered by Batchelor College referred to in subclause (1).
- (3) Subject to the By-laws and rules, if a student is enrolled by virtue of subclause (1) in a program or course offered by the Institute, the Institute must give the student credit for any subjects or work completed by the student when enrolled in the program or course offered by Batchelor College.
- (4) If a person completes a program or course offered by Batchelor College before the commencement of this Act but on that commencement an award in respect of the program or course has not been conferred on him or her, the Institute may, after holding any examination or making any assessment that the Council considers necessary, confer the award on him or her.
- (5) An award conferred under subclause (4) is to be under the seal of the Institute and signed by the person or persons the Council appoints for that purpose.

## **6. Holdings or interests in corporations**

If, before the commencement of this Act, Batchelor College established or participated in the establishment of a body corporate (however described and whether in Australia or elsewhere) any of the shares or other beneficial interests in which are held by or on behalf of Batchelor College, those shares or other beneficial interests are, on that commencement, held by or on behalf of the Institute.

## **7. By-laws, rules etc.**

On the commencement of this Act, the by-laws, rules and resolutions made by the council of Batchelor College that:

- (a) are in force immediately before the commencement of this Act; and
- (b) are by-laws, rules or resolutions that the Council could make after that commencement,

are to be taken to be made and have effect for all purposes as having been made by the Council under this Act and the Council may vary, amend, repeal or otherwise deal with those by-laws, rules or resolutions as if they were By-laws, rules or resolutions made by the Council under this Act.



**8. General**

Subject to this Act, any act, matter or thing done or omitted to be done before the commencement of this Act by, to or in respect of Batchelor College is, to the extent that it would but for this Act have had force or effect or been in operation after that commencement, to be taken to have been done or omitted to be done by, to or in respect of the Institute.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

**2 LIST OF LEGISLATION*****Batchelor Institute of Indigenous Tertiary Education Act 1999 (Act No. 28, 1999)***

Assent date	18 June 1999
Commenced	1 July 1999 (s 2)

***Northern Territory Employment and Training Authority (Consequential Amendments) Act 1999 (Act No. 52, 1999)***

Assent date	30 November 1999
Commenced	30 November 1999

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date	29 June 2001
Commenced	15 July 2001 (s 2 and s 2 <i>Corporations Act 2001</i> (Cth) (Act No. 56, 1990) and Cth <i>Gaz</i> S285, 13 July 2001)

***Statute Law Revision (Financial Provisions) Act 2002 (Act No. 38, 2002)***

Assent date	13 September 2002
Commenced	30 October 2002 ( <i>Gaz</i> G43, 30 October 2002, p 3)

***Northern Territory Employment and Training Authority (Consequential Amendments) Act 2002 (Act No. 47, 2002)***

Assent date	13 September 2002
Commenced	6 Nov 2002 (s 2 and s 2 <i>Northern Territory Employment and Training Authority Act 2002</i> and <i>Gaz</i> G44, 6 November 2002, p 2)

***Batchelor Institute of Indigenous Tertiary Education Amendment Act 2005 (Act No. 30, 2005)***

Assent date	26 August 2005
Commenced	30 September 2005 ( <i>Gaz</i> G39, 28 September 2005, p 4)

***Statute Law Revision Act 2007 (Act No. 4, 2007)***

Assent date	8 March 2007
Commenced	8 March 2007

**Batchelor Institute of Indigenous Tertiary Education Amendment Act 2012 (Act No. 4, 2012)**

Assent date	22 March 2012
Commenced	14 May 2012 ( <i>Gaz</i> S20, 11 May 2012)

**Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)**

Assent date	12 July 2013
Commenced	28 August 2013 ( <i>Gaz</i> G35, 28 August 2013, p 2)

**3 LIST OF AMENDMENTS**

pt 1 hdg	ins No. 4, 2012, s 10
s 3	amd No. 4, 2012, s 4
s 4	amd No. 4, 2012, s 10
ss 6 – 7	amd No. 4, 2012, s 10
s 8	amd No. 17, 2001, s 21; No. 4, 2012, s 10
pt 3 hdg	sub No. 4, 2012, s 5
pt 3	
div 1 hdg	sub No. 4, 2012, s 5
s 9	sub No. 4, 2012, s 5
s 10	amd No. 52, 1999, s 3; No. 47, 2002, s 3; No. 30, 2005, s 4 sub No. 4, 2012, s 5
ss 11 – 12	sub No. 4, 2012, s 5
s 13	amd No. 30, 2005, s 5 sub No. 4, 2012, s 5
ss 14 – 17	sub No. 4, 2012, s 5
s 17A	ins No. 30, 2005, s 6 rep No. 4, 2012, s 5
s 18	amd No. 30, 2005, s 7 sub No. 4, 2012, s 5
ss 19 – 21	sub No. 4, 2012, s 5
pt 3	
div 2 hdg	ins No. 4, 2012, s 5
ss 22 – 23	sub No. 4, 2012, s 5
pt 3	
div 3 hdg	ins No. 4, 2012, s 5
s 24	
ss 24A – 24G	ins No. 4, 2012, s 5
pt 3	
div 4 hdg	ins No. 4, 2012, s 5
s 25	sub No. 4, 2012, s 5
s 26	
ss 26A – 26B	ins No. 4, 2012, s 5
pt 3	
div 2 hdg	rep No. 4, 2012, s 5
pt 3	
div 5 hdg	ins No. 4, 2012, s 5
ss 27 – 30	sub No. 4, 2012, s 5
s 31	amd No. 4, 2012, s 10
s 36	amd No. 4, 2012, s 10
s 37	amd No. 38, 2002, s 6; No. 4, 2012, s 10
s 38	amd No. 4, 2012, s 10
s 40	amd No. 4, 2012, s 10
s 41	amd No. 38, 2002, s 6; No. 4, 2012, s 10
ss 43 – 44	amd No. 4, 2012, s 10
s 45	amd No. 4, 2012, s 6
ss 46 – 47	amd No. 4, 2012, s 10

## ENDNOTES

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s 49	amd No. 4, 2012, s 10; No. 23, 2013, s 11
s 50	amd No. 4, 2012, s 10
s 51	amd No. 23, 2013, s 11
ss 52 – 55	amd No. 4, 2012, s 10
s 56	amd No. 4, 2007, s 7
pt 8 hdg	amd No. 4, 2012, s 10
s 57	sub No. 4, 2012, s 7
s 59 hdg	amd No. 4, 2012, s 8
pt 9 hdg	ins No. 4, 2012, s 9
pt 9	
div 1 hdg	ins No. 4, 2012, s 9
ss 60 – 63	ins No. 4, 2012, s 9
pt 9	
div 2 hdg	ins No. 4, 2012, s 9
ss 64 – 65	ins No. 4, 2012, s 9
pt 9	
div 3 hdg	ins No. 4, 2012, s 9
ss 66 – 68	ins No. 4, 2012, s 9
pt 9	
div 4 hdg	ins No. 4, 2012, s 9
ss 69 – 70	ins No. 4, 2012, s 9