

# NORTHERN TERRITORY OF AUSTRALIA

## BATCHELOR INSTITUTE OF INDIGENOUS TERTIARY EDUCATION AMENDMENT ACT 2012

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Act No. 4 of 2012

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 4 of 2012

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An Act to amend the *Batchelor Institute of Indigenous Tertiary Education Act*  
and the *Education (College and School Councils) Regulations*

[Assented to 22 March 2012]  
[Second reading 1 December 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Batchelor Institute of Indigenous Tertiary Education Amendment Act 2012*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Batchelor Institute of Indigenous Tertiary Education Act

### 3 Act amended

This Part amends the *Batchelor Institute of Indigenous Tertiary Education Amendment Act*.

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**4 Section 3 amended**

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- (1) Section 3(1)

*omit*

, unless the contrary intention appears

- (2) Section 3(1) definitions ***Chairperson, committee, Deputy Chairperson, first council, member*** and ***Torres Strait Islander***

*omit*

- (3) Section 3(1)

*insert (in alphabetical order)*

***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).

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

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

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

***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.

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

***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).

***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).

- (4) Section 3(1), definition ***Batchelor College***

*omit*

Part VI

*insert*

Part 6

- (5) Section 3(1), definition ***Council***

*omit*

constituted under Division 1 of Part 3

*insert*

established by section 10

- (6) Section 3(1), definition ***graduate***

*omit*

the purposes of

- (7) Section 3(1), definition ***Institute***

*omit*

under

*insert*

by

- (8) Section 3(2)

*omit, insert*

- (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).
- (9) Section 3(3), before "includes"  
*insert*  
of an Institute entity
- (10) Section 3(3)(b)  
*omit*  
section 19  
*insert*  
section 17(1)

## **5 Part 3 replaced**

### Part 3

*repeal, insert*

## **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.

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(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.

**6 Section 45 amended**

(1) Section 45(2)

*omit*

report is to be forwarded to the Minister

*insert*

Council must forward the report

(2) Section 45(2)(b)

*omit*

any

*insert*

a

- (3) After section 45(2)

*insert*

- (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.

## **7 Section 57 replaced**

Section 57

*repeal, insert*

### **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.

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**8 Section 59 amended**

Section 59, heading, after "transitional"

*insert*

matters for *Batchelor Institute of Indigenous Tertiary Education Act 1999*

**9 Part 9 inserted**

After section 59

*insert*

**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).

##### **10      Act further amended**

The Schedule has effect.

### **Part 3              Amendment of Education (College and School Councils) Regulations**

#### **11      Regulations amended**

This Part amends the *Education (College and School Councils) Regulations*.

#### **12      Part IIA repealed**

Part IIA

*repeal*



## Schedule Batchelor Institute of Indigenous Tertiary Education Act further amended

section 10

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 1, heading, at the end		<b>matters</b>
sections 4(2)(a) and 6(a) to (c), at the end		and
section 7(1)(a)	Aborigines and Torres Strait Islanders;	indigenous people; and
section 7(1)(b) to (s), at the end		and
section 8(2)(g)	any of the States or Territories of the Commonwealth	a State or another Territory
section 8(2)(s)	by virtue of	under
section 8(2)(a) to (q), at the end		and
section 31(1), after "may"		, in relation to the education and training it provides:
section 31(1)(b)	Institute,	Institute.
section 31(1)	in relation to the education and training provided by the Institute.	
section 36(1)(a), at the end		and
section 37(2)	of the Institute referred to in	maintained under

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section 38(1)(a) and (b), at the end		and
section 40(2), after "purpose and"		one of the following circumstances applies
section 40(2)(e)	purpose; or	purpose;
section 40(2)(f)	purpose,	purpose;
section 40(4)(a)	notice in the <i>Gazette</i>	<i>Gazette</i> notice
section 41(1)(a), at the end		or
section 41(2)	referred to	mentioned
section 43(1)(a) to (c), at the end		and
section 43(1)(e)	referred to	mentioned
sections 44(1)(a) and 46(2)(a), at the end		and
section 47(b)	section 46,	section 46;
section 49(2)	the generality of subsection (1), the By-laws may	subsection (1), the Council may make by-laws to do any of the following
section 49(2)(b)	whole paragraph	(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;
section 49(2)(c) and (d), after "Council"		or Board

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section 49(2)(e)	committees of the Council	members of Council committees established under section 23(1)
section 49(2)(zh)	in lieu	instead
section 49(2)(zk)	and	
section 49(3), after "may"		do any of the following
section 49(3)(b)	bodies; or	bodies;
section 50(1), after "may"		do any of the following
section 50(1)(a), after "for"		any of the following
section 50(1)(a)(iv)	so; or	so;
section 50(1)(b)	the case of the commission or alleged commission of an offence referred to in	relation to an offence created under
section 50(1)(c)	and	
section 50(2)	referred to	mentioned
section 52	members, the staff and the students	members and the staff, students and members of the Board
section 53(2)	referred to	mentioned
section 53(2)(a), at the end		and
section 53(2)(c)	penalty,	penalty;
section 54(2)(a), at the end		or
section 55(1)(a), at the end		and
section 55(1)(b)	Chairman	Chairperson

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section 55(1)(c)	the case of published,	relation to published;
section 55(2)(a)	Chairman	Chairperson
section 55(2)(b)	conduct,	conduct;
Part 8 heading, at the end		<b>matters</b>

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