

Serial 152

Batchelor Institute of Indigenous Tertiary Education Act 1999

Mr Adamson

**A BILL
for
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



NORTHERN TERRITORY OF AUSTRALIA
BATCHELOR INSTITUTE OF INDIGENOUS TERTIARY

EDUCATION ACT 1999

No. of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. of 1999

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

[Assented to 1999]
[Second reading 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Batchelor Institute of Indigenous Tertiary Education Act 1999*.

2. Commencement

This Act comes into operation on 1 July 1999.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

"Batchelor College" means Batchelor College established under Part VI of the *Education Act* and in existence immediately before the commencement of this Act;

"By-laws" means by-laws made under section 49;

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"Chairperson" means the Chairperson of the Council appointed under section 14;

"code of conduct" means a code of conduct made by the Council under section 52 and includes a provision of a code of conduct;

"committee" means a committee of the Council;

"Council" means the Council of the Institute constituted under Division 1 of Part 3;

"Deputy Chairperson" means the Deputy Chairperson of the Council elected under section 20;

"Director" means the Director of the Institute appointed under section 27;

"first Council" means the first Council to be constituted in accordance with Division 1 of Part 3 after the commencement of this Act;

"graduate" means a member of a class of persons determined under the By-laws to be graduates for the purposes of this Act;

"Institute" means the Batchelor Institute of Indigenous Tertiary Education established under section 4;

"member" means a member of the Council referred to in section 10(3);

"rules" means rules made under section 51;

"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;

"Torres Strait Islander" means a person descended from the indigenous inhabitants of the Torres Strait Islands.

(2) A reference in this Act to the Chairperson or Director includes a reference to a person acting in or performing the duties of the Chairperson or Director.

(3) A reference in this Act to the term of office of a member 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 19 – 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;

(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;

(b) the graduates of the Institute and Batchelor College;

(c) the holders of awards other than degrees from the Institute and Batchelor College;

(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 –

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- (a) provide tertiary education relevant to the needs of Aborigines and Torres Strait Islanders;
- (b) generally facilitate, encourage, develop and improve study and research, particularly in subjects of relevance to indigenous people;
- (c) provide other educational programs and courses of study or instruction, including vocational education and training, courses of higher education and cultural studies;
- (d) accredit the educational programs and courses offered by the Institute;
- (e) review at regular intervals the programs and courses to be provided by the Institute;
- (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;
- (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;
- (h) liaise with industry, trade, commerce, the community, educational and training bodies and professional organisations on matters of common interest;
- (j) advance research and scholarship and their practical application to education, industry, commerce and the community generally;
- (k) preserve, extend and disseminate knowledge and skills;
- (m) provide consultative and research services and facilities;
- (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;
- (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;
- (q) provide facilities and resources for students;
- (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;

- (s) provide facilities and resources for the staff to carry out their duties;
 - (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;
 - (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;
 - (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;
 - (d) erect buildings;
 - (e) occupy, use, control and manage land or a building owned or leased by the Institute;
 - (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;
 - (g) enter into arrangements with other institutions of higher, technical or further education (whether in Australia or elsewhere) or with any of the States or Territories of the Commonwealth for the establishment in the Institute of courses of lectures or studies for degrees, diplomas, certificates or otherwise;
 - (h) confer awards jointly with another educational institution;

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- (j) establish and maintain cultural centres, libraries, laboratories and museums in connection with the operations of the Institute;
- (k) establish, manage and control halls of residence and other forms of student and other accommodation;
- (m) employ staff, engage consultants and appoint agents and attorneys;
- (n) charge for work, services, goods and information done or supplied by the Institute;
- (p) borrow and invest money;
- (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;
- (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 incorporated in the Territory or elsewhere.

PART 3 – ADMINISTRATION

Division 1 – Council

9. Institute's affairs to be conducted by Council

(1) Subject to this Act, the affairs of the Institute are to be conducted by the Council.

(2) All acts, matters and things done by the Council or by the Director or any other person in the name of or on behalf of the Institute with the express or implied authority of the Council are to be taken to have been done by the Institute.

10. Composition of Council

(1) In this section –

"Central Zone" means the area comprised by the Alice Springs Region, the Aputula Region and the Tennant Creek Region;

"Northern Zone" means the area comprised by the Darwin Region, the Jabiru Region, the Katherine Region and the Nhulunbuy Region;

"Region" means a Region in the Territory –

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- (a) listed in Column 2 of the Table to the Regional Boundaries Determination made on 9 July 1996 under section 91(1)(b) of the *Aboriginal and Torres Strait Islander Commission Act 1989* of the Commonwealth; and
 - (b) delineated on the boundary map specified in that Column in relation to the Region.
- (2) The Council consists of 20 members.
 - (3) The members of the Council are –
 - (a) the Chairperson of the Council;
 - (b) the Chief Executive Officer of the Agency responsible for the administration of the *Education Act* or his or her nominee;
 - (c) a student elected by the students;
 - (d) a full-time member of the staff of the Institute who is an Aborigine or Torres Strait Islander elected by the members of the staff who are Aborigines and Torres Strait Islanders;
 - (e) a full-time member of the academic staff of the Institute elected by the academic staff;
 - (f) a person with specialist knowledge or skills and current experience in the field of higher education nominated by the Minister;
 - (g) a person with specialist knowledge or skills and current experience in the field of vocational education and training nominated by the Minister;
 - (h) a person who in the opinion of the Council has specialist knowledge or skills and current experience in the provision of health services to Aborigines and Torres Strait Islanders;
 - (j) a member of the Aboriginal Programs Employment Training Advisory Council established under section 18(d) of the *Northern Territory Employment and Training Authority Act*;
 - (k) 5 persons who reside in the Central Zone of whom –
 - (i) one must reside in the ATSIC Alice Springs Region and be nominated in accordance with the By-laws by persons residing in that Region;

- (ii) one must reside in the ATSIC Aputula Region and be nominated in accordance with the By-laws by persons residing in that Region;
- (iii) one must reside in the ATSIC Tennant Creek Region and be nominated in accordance with the By-laws by persons residing in that Region; and
- (iv) 2 must reside in any part of the Zone and be nominated in accordance with the By-laws by persons residing in the Zone; and
- (m) 6 persons who reside in the Northern Zone of whom –
 - (i) one must reside in the ATSIC Darwin Region and be nominated in accordance with the By-laws by persons residing in that Region;
 - (ii) one must reside in the ATSIC Jabiru Region and be nominated in accordance with the By-laws by persons residing in that Region;
 - (iii) one must reside in the ATSIC Katherine Region and be nominated in accordance with the By-laws by the persons residing in that Region;
 - (iv) one must reside in the ATSIC Nhulunbuy Region and be nominated in accordance with the By-laws by persons residing in that Region; and
 - (v) 2 must reside in any part of the Zone and be nominated in accordance with the By-laws by persons residing in the Zone.

11. Eligibility to be member

- (1) A person is not eligible to be a member –
 - (a) unless he or she is qualified in accordance with the relevant paragraph in section 10(3); and
 - (b) if the person formerly served 2 successive terms of office as a member – unless not less than 3 years have passed since he or she held office.
- (2) A person who is a member of the staff or a student is not eligible to be the Chairperson.
- (3) A person is not eligible to be a member referred to in section 10(3)(k) or (m) unless he or she has a commitment to the development of

vocational education and training opportunities for Aborigines and Torres Strait Islanders and has the ability to represent the opinions of the Aborigines and Torres Strait Islanders residing in the Region or Zone that he or she represents.

- (4) A person may hold only one office as member at any one time.

12. Request for election of members

(1) For the purpose of constituting the first Council, the Director must request each group of persons who will be represented by a member referred to in section 10(3)(c), (d) or (e) to elect a person as the member.

(2) Subject to section 19, if there is a vacancy in the office of a member referred to in section 10(3)(c), (d) or (e), the Director must request the group of persons represented by the member to elect another member.

(3) The request under subsection (1) or (2) is to –

(a) be in writing and made in the manner and form the Director considers appropriate;

(b) specify the person to whom notice of the result of the election is to be given; and

(c) specify the date by which notice of the result is to be received by that person.

(4) The request is to be complied with by the persons to whom it is directed.

13. Request for nominations

(1) For the purpose of constituting the first Council or, subject to section 19, if there is a vacancy in the office of a member specified in section 10(3)(b), (f), (g), (j) (k) or (m), the Director must –

(a) request –

(i) in the case of a member referred to in section 10(3)(b), (f), (g) or (j) – the Chief Executive Officer, the Minister or the Aboriginal Programs Employment Training Advisory Council (as the case requires) to nominate a person as the member; or

(ii) in the case of a member or members referred to in section 10(3)(k) or (m) – nominations by persons residing in the Region or Zone of the person or number of persons as the member or members to represent the Region or Zone; and

- (b) specify the person to whom notice of the nomination or nominations is to be given and the date by which each nomination is to be received by that person.
- (2) The request is to be in writing and made in the manner and form the Director considers appropriate.
- (3) The request is to be complied with by the person or persons to whom it is directed.

14. Appointment of Chairperson

- (1) The Administrator must in writing appoint a person to be the Chairperson of the Council.
- (2) The Administrator must not appoint a person to be the Chairperson unless –
 - (a) the appointment is made on the advice of the Council and the Director; and
 - (b) the person is eligible under section 11.
- (3) Subject to this Division, the Chairperson holds office for 3 years.

15. Taking of office of other members

- (1) The Administrator must, in writing –
 - (a) declare a person elected as a member in accordance with a request under section 12 to be a member of the Council;
 - (b) appoint a person nominated as a member in accordance with a request under section 13 to be a member of the Council; and
 - (c) appoint the member of the Council referred to in section 10(3)(h).
- (2) The Administrator must not appoint or declare a person to be a member under this section unless he or she –
 - (a) is eligible under section 11(1) or (4); and
 - (b) in the case of a member referred to in section 10(3)(k) or (m) – is, in the opinion of the Administrator, eligible under section 11(3).
- (3) Subject to this Division, a person does not hold office as member until the Administrator declares his or her membership or appoints him or her to be a member under this section.

16. Failure to nominate or elect member

(1) If a person, a group of persons or the Aboriginal Programs Employment Training Advisory Council fails or refuses to elect or nominate a person or the sufficient number of persons in accordance with a request under section 12 or 13 –

- (a) the Administrator may on the advice of the Director appoint a person or the sufficient number of persons qualified under this Division to be the member or members; and
 - (b) a person appointed to be a member under paragraph (a) is to be taken to have been duly elected or nominated by the group, body of persons or Aboriginal Programs Employment Training Advisory Council, as the case may be.
- (2) The appointment of a member under this section is to be in writing.

17. Term of office of members

Subject to this Division, a member of the Council holds office for –

- (a) in the case of a member referred to in section 10(3)(c), (d) or (e) – one year; or
- (b) in any other case – the period not exceeding 3 years that the Administrator specifies in the instrument of appointment or declaration in respect of the member.

18. Vacation of office of member

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

- (a) the member's term of office expires;
- (b) 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;
- (c) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more or is found guilty by a court outside the Territory of an offence which, if committed against a law in force in the Territory, would be an offence punishable by imprisonment for 12 months or more;
- (d) the member becomes an involuntary patient within the meaning of the *Mental Health and Related Services Act* or receives involuntary treatment under an interim community management order or a

community management order under Part 7 of that Act or is similarly admitted or treated under a law of a State or another Territory of the Commonwealth which provides for the care and treatment of people with mental illness;

- (e) the member is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post, except if he or she is on leave granted by the Council;
- (f) the member resigns the member's office by writing signed by the member and delivered to the Director;
- (g) the member ceases to be qualified for nomination or election under section 10(3) or ceases to be eligible for appointment under section 11;
- (h) the member knowingly contravenes or fails to comply with section 21 or 22; or
- (j) subject to a resolution of the Council to the contrary, the member knowingly contravenes or fails to comply with a code of conduct that applies to the member.

19. Casual vacancies

(1) If a vacancy occurs in the office of a member referred to in section 10(3)(c), (d), (e), (f), (g), (h), (k) or (m) before the expiry of the term of the member's office but after the member has served not less than half the term of his or her office, the Council must appoint a person who is qualified under this Division to hold that office to fill the vacancy.

(2) A person appointed under subsection (1) holds office as a member of the Council for the unexpired portion of the term of office of the member in whose place he or she is appointed.

20. Deputy Chairperson of Council

(1) At the first meeting of the first Council, and subsequently at the first meeting of the Council in each year, the members of the Council must elect one of their number to be 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) Subject to subsection (4), the term of office of the Deputy Chairperson is from his or her election until the election of the Deputy Chairperson at the first meeting of the Council in the next year after his or her election.

- (4) The Deputy Chairperson holds office until –
 - (a) the expiry of his or her term of office as Deputy Chairperson;
 - (b) he or she resigns the office of Deputy Chairperson by writing signed by him or her and delivered to the Director;
 - (c) he or she becomes a member of the staff or a student; or
 - (d) a vacancy occurs in his or her office as member of the Council.
- (5) A member may be re-elected to be Deputy Chairperson.
- (6) If a vacancy occurs in the office of Deputy Chairperson otherwise than by the expiry of the term of office, the Council must elect one of its members eligible under subsection (2) to be the Deputy Chairperson to hold office for the unexpired portion of the term of office of the person in whose place he or she is appointed.
- (7) If, for any reason, the Chairperson is unable to exercise his or her powers or perform his or her functions or there is a vacancy in the office of Chairperson, the Deputy Chairperson must act in the office of the Chairperson.

21. Disclosure of interest

- (1) On a person becoming a member of the Council, he or she must disclose –
 - (a) the name and a description of any 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 any partnership of which he or she is a partner or by whom he or she is employed;
 - (c) any other interest he or she has in relation to a specified company or other body or a specified person that is likely to give rise to a conflict with his or her duties as member; and
 - (d) any other information prescribed by the rules.
- (2) The disclosure is to be made in the manner and form prescribed by the rules.
- (3) On a member making a disclosure under subsection (2), the member is taken to have given sufficient disclosure of any direct or indirect pecuniary interest of the member in relation to any matter that might be considered at a meeting of the Council or any thing that might be done by the Council after the disclosure is made.

(4) If there is a change to information disclosed by the member or the member acquires new interests likely to give rise to a conflict with his duties as member, the member must, not later than 30 days after the change occurs or the interest is acquired, vary his or her disclosure accordingly in the manner prescribed by the rules.

(5) A disclosure (as varied) remains effective during the member's term of office and any successive term of office held by the member.

(6) The Director must –

- (a) keep a record of the particulars of all disclosures and variations of disclosures made under this section; and
- (b) make the record available at all reasonable times for inspection on payment of the fee determined by the Council for that purpose.

22. Obligation to disclose interest on becoming aware of conflict of interest

(1) In this section, "Council" includes a committee of the Council.

(2) Despite section 21, if a member of the Council becomes aware that he or she has or may have a direct or indirect pecuniary interest in –

- (a) a matter being considered or about to be considered by the Council;
or
- (b) a thing being done or about to be done by the Council,

the member must as soon as possible disclose the nature of the interest or possible interest at a meeting of the Council.

(3) Subject to a resolution of the Council to the contrary, a member of the Council who discloses the nature of a pecuniary interest in a matter or thing in accordance with subsection (2) must not –

- (a) be present during deliberations by the Council or take part in a decision of the Council in relation to that matter or thing; or
- (b) perform a function under this Act in relation to that matter or thing.

(4) The resolution of the Council to the contrary is to be deliberated and voted on in the absence of the member.

23. Meetings of Council

(1) There are to be not less than 4 meetings of the Council in each year.

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(2) The interval between a meeting and the meeting next following is not to exceed 4 months.

(3) The Chairperson must call the meetings of the Council that are necessary for the exercise of its powers and the performance of its functions.

(4) Despite subsection (3), if not less than 1/3 of the members request the Chairperson to call a meeting of the Council, the Chairperson must call a meeting not less than 21 days after receiving the request.

(5) At a meeting of the Council –

(a) the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and Deputy Chairperson, the member elected by the members present from amongst their number must preside;

(b) the quorum is half the number of members for the time being holding office;

(c) each member present has one vote;

(d) questions arising are to be determined by a majority of the votes of the members present and, in the event of an equality of votes, the person presiding over the meeting has a casting vote; and

(e) subject to this Act and the By-laws, the procedure to be followed at or in connection with the meeting is to be determined by the Council.

(6) Subject to a resolution of the Council to the contrary, the Director must attend all meetings of the Council to inform and advise the Council on the matters before it.

24. Committees of Council

(1) The Council may establish the committees it thinks necessary for it to perform its functions and exercise its powers.

(2) The Director or his or her nominee is a member of each committee.

(3) The Council must appoint at least 2 other persons to be members of a committee, one of whom must be a member of the Council.

(4) Subject to subsection (3), the Council may in writing appoint a person who is not a member of the Council to be a member of a committee.

25. Delegation

(1) The Council may, by instrument, delegate to a person or a committee or other body any of the Council's powers and functions under this Act, other than this power of delegation and the power to make by-laws, rules or a code of conduct.

(2) A delegation under this section may be to a specified person or a person from time to time holding, acting in or performing the duties of an office or position.

(3) A power or function delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or performed by the Council.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Council.

(5) 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.

(6) If the Council delegates a power or function to a committee or other body and there is a change in the membership of the committee or body, the delegation continues in force as a delegation of the power or function to the committee or body as newly constituted unless the Council expressly revokes or varies the instrument of delegation.

26. Validity of proceedings and actions of Council

No proceedings of the Council or act or thing done by the Council, a committee of the Council, the Chairperson or a delegate of the Council is invalid by reason only of –

- (a) a defect in the election, nomination, appointment or declaration of the membership of a member of the Council;
- (b) a defect in the election of the Deputy Chairperson;
- (c) a defect in the appointment of a member of a committee of the Council;
- (d) a defect in a delegation by the Council;
- (e) a disqualification of a member of the Council or a committee of the Council;
- (f) a defect in the convening or conduct of a meeting of the Council or a committee of the Council;

- (g) there being a vacancy in the membership of the Council or a committee of the Council;
- (h) the fact that a person who purported to be a member of the Council or a committee of the Council was not a member of the Council or committee; or
- (j) a contravention of or failure to comply with section 21 or 22.

Division 2 – Director and Deputy Director

27. Director

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

29. Delegation by Director

- (1) The Director may, by instrument, delegate to a person any of his or her powers and functions under this Act, other than this power of delegation.

(2) A delegation under this section may be to a specified person or a person from time to time holding, acting in or performing the duties of an office or position.

(3) A power or function delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or performed by the Director.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Director.

30. Validity of actions of Director etc.

No act or thing done by the Director, Deputy Director or a delegate of the Director is invalid by reason only of a defect in his or her appointment or the delegation.

PART 4 – DEGREES AND OTHER AWARDS

31. Degrees and awards of Institute

(1) The Council may –

(a) confer degrees of the Institute; and

(b) grant diplomas, certificates or other awards of the Institute,

in relation to the education and training provided by 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;

(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. Bank accounts

(1) Subject to this Part, the Council may open and maintain an account or accounts with a bank, building society or credit union 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 of the Institute referred to in 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;
- (b) there are adequate controls over the incurring of liabilities by the Institute;
- (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 –

- (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; or
- (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 notice in the *Gazette* –

- (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;
- (b) on overdraft from a bank; 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 referred to 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;
- (b) approve any amendments to the budget for the current financial year;
- (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;
- (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 referred to 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;
- (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 report is to be forwarded to the Minister—

- (a) within 6 months after the end of the financial year; or
- (b) within any longer period approved by the Minister.

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;

(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 the generality of subsection (1), the By-laws may –
- (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 the method of election or nomination of members of the Council, including the qualifications of the persons electing or nominating the members and the procedures relating to nominating, enrolling and conducting ballots, the counting of votes and the declaration of the results;
 - (c) prescribe the manner and time of convening, holding and adjourning meetings of the Council 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;
 - (e) provide for the appointment of committees of the Council 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;

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- (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;

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- (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 in lieu 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 penalties not exceeding \$1,000 for an offence against the By-laws; and
 - (zm) designate an offence against the By-laws to be a regulatory offence.
- (3) A by-law may –
- (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; or
 - (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 –
- (a) create offences in relation to the use of motor vehicles including offences for –
 - (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; or
 - (v) doing any other prescribed act on a site;
 - (b) in the case of the commission or alleged commission of an offence referred to in 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; and
 - (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 referred to 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 penalties not exceeding \$100 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, the staff and the students.

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 referred to in subsection (1), a certificate signed by the Director specifying –

- (a) the person or body by whom the penalty was imposed;
- (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;
- (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;
 - (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 Chairman; and
 - (c) in the case of 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 Chairman; 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) Despite section 63(11) of the *Interpretation Act*, section 63 of that Act does not apply to or in relation to rules.

PART 8 – MISCELLANEOUS

57. Protection of members etc.

(1) No civil or criminal proceeding lies against a member of the Council or the Director, Deputy Director or any other member of the staff for or in respect of an act or thing done or omitted to be done in good faith by the member in his or her capacity as member or by the Director, Deputy Director or other member of the staff in the exercise or purported exercise of a power or the performance or purported performance of a function under this Act by the member, Director, Deputy Director or member of the staff.

(2) No civil or criminal proceeding lies against a member of the Council or the Director, Deputy Director or any other member of the staff in respect of any act or thing done or omitted to be done by the Institute or the Council.

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

- (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.

SCHEDULE

Section 59

SAVINGS AND TRANSITIONAL PROVISIONS

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

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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

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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.