



Western Australia

## **Edith Cowan University Act 1984**

Compare between:

[02 Jan 2017, 04-h0-00] and [01 Oct 2017, 04-i0-00]



Western Australia

## **Edith Cowan University Act 1984**

**An Act to establish and incorporate Edith Cowan University and for incidental and other purposes.**

*[Long title inserted by No. 63 of 1990 s. 4; amended by No. 32 of 2016 s. 49.]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Edith Cowan University Act 1984*<sup>1</sup>.  
[Section 1 amended by No. 63 of 1990 s. 19.]

### **2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

(1) In this Act unless the contrary intention appears —

**Academic Board** means the Board established in accordance with section 18;

**Academy** means the Western Australian Academy of Performing Arts referred to in section 24;

**Advisory Board** means —

- (a) the ECU South West Campus (Bunbury) Advisory Board referred to in section 20(1); or
- (b) the Advisory Board of the Academy referred to in section 25(1);

**Alumni** means graduates of —

- (a) the University;
- (b) a constituent college or a college referred to in section 47 of the Colleges Act; or
- (c) a college established and maintained by the Minister at Churchlands, Claremont, Graylands, Mount Lawley or Nedlands under section 10 of the *Education Act 1928*<sup>2</sup> as in force immediately before the appointed day as defined in section 4 of the *Teacher Education Act 1972*<sup>3</sup>;

***casual vacancy*** means a vacancy arising in the office of a member of the Council otherwise than by reason of the effluxion of time;

***Chancellor*** means the Chancellor of the University;

***Colleges Act*** means the *Colleges Act 1978*<sup>4</sup>;

***commencement date*** means the date on which this Act comes into operation<sup>1</sup>;

***Council*** means the Council of the University;

***Deputy Chancellor*** means the Deputy Chancellor of the University;

***enrolled student*** means a student enrolled in the University;

***examination*** means an examination conducted by the University and includes an examination conducted by any other person or body prescribed by the Statutes as a person or body authorised to conduct examinations for the University;

***member*** means a member of the Council;

***member of the staff*** means the Vice-Chancellor, a member of the academic or other staff, an officer or employee of the University;

***prescribed*** means prescribed by this Act, by a by-law made under this Act, by a Statute or by a rule made under a Statute;

***residential accommodation*** —

- (a) means any form of accommodation (including, without limitation, a residential college, hostel, hall of residence or form of independent living); and
- (b) includes facilities that are —
  - (i) ancillary to residential accommodation; and
  - (ii) primarily for the use of members of the staff, or enrolled students, or both;

***Statute*** means a Statute of the University in force in pursuance of this Act;

***Student Guild*** means the Edith Cowan University Student Guild referred to in section 41;

***University*** means Edith Cowan University referred to in this Act;

***Vice-Chancellor*** means the Vice-Chancellor of the University.

- (2) Any question arising as to whether a person is or is not a member of the academic staff, or a member of the salaried staff, or an officer or employee of the University shall be determined by the Council and the decision of the Council is final.
- (3) Any question arising as to whether a person —
- (a) is a member of the staff at the Academy or at a particular campus of the University; or
  - (b) is an enrolled student at the Academy or at a particular campus of the University,

shall be determined by the Council and the decision of the Council is final.

*[Section 3 amended by No. 77 of 1985 s. 11; No. 48 of 1989 s. 21; No. 63 of 1990 s. 5 and 19; No. 32 of 2016 s. 50.]*

## Part II — Edith Cowan University

[Heading amended by No. 63 of 1990 s. 19; No. 32 of 2016 s. 51.]

### 4. Establishment

- (1) On and after the day on which the *Western Australian College of Advanced Education Amendment Act 1990* comes into operation<sup>1</sup> (in this section referred to as ***the commencement day***) the body corporate, consisting of the Council, the members of the staff and the enrolled students, that was continued in existence under this Act as if on the coming into operation of this Act it had been established under this Act by the name of the “Western Australian College of Advanced Education” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act to be called “Edith Cowan University”, but so that the corporate identity of the body corporate and its rights and obligations are not affected by the change in name.
- (2) A reference to the Western Australian College of Advanced Education, whether by use of that name or a similar or abbreviated form of that name —
  - (a) in a written law passed or made before the commencement day; or
  - (b) in any document or other instrument made, executed, entered into or done before the commencement day; or
  - (c) made before the commencement day in any other manner,

shall be construed as if it had been amended to be a reference to Edith Cowan University, unless because of the context it would be inappropriate to construe the reference in that manner.

[Section 4 inserted by No. 63 of 1990 s. 6; amended by No. 32 of 2016 s. 52.]

**5. Constitution and powers**

- (1) Subject to this Act, the University shall consist of the Council, the members of the staff and the enrolled students.
- (2) The University shall be a body corporate and under its corporate name —
  - (a) has perpetual succession; and
  - (b) shall have a common seal; and
  - (c) may sue and be sued in any court; and
  - (d) may take, purchase and hold real and personal property, including property devised, bequeathed or given to the University; and
  - (e) may grant, sell, alienate, assign and demise real and personal property acquired or held by the University as it thinks fit subject only, in respect of property devised, bequeathed or given to the University, to the express trusts of any deed, will, or instrument under which the property was acquired; and
  - (ea) may grant leases of land vested in the University under section 28 for a term not exceeding 99 years subject, where the term exceeds 21 years, to the approval of the Minister; and
  - (eb) may enter into business arrangements; and
  - (f) may do and suffer all other acts and things that bodies corporate may by law do and suffer.

*[Section 5 amended by No. 63 of 1990 s. 7 and 19; No. 8 of 2005 s. 14; No. 32 of 2016 s. 53.]*

**6. Common seal**

- (1) The common seal of the University shall be kept in such custody as the Council directs and shall not be used except upon resolution of the Council or as may be authorised by the Statutes.



- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the University affixed to any document and shall presume that it was duly affixed until the contrary is proved.

*[Section 6 amended by No. 63 of 1990 s. 19.]*

**7. Functions of the University**

- (1) The functions of the University include the following —
- (a) to provide, on a full-time or part-time basis, courses of study appropriate to a university, and other tertiary courses;
  - (b) to encourage and participate in the development and improvement of tertiary education;
  - (c) to provide other courses of study approved by the Council;
  - (d) to undertake, aid or support scholarship, pure and applied research, invention, innovation, education and consultancy, and to apply those matters to the advancement and application of knowledge —
    - (i) to the benefit of industry, business and government; and
    - (ii) to the benefit and wellbeing of the Western Australian, Australian and international communities;
  - (e) to commercially develop or commercially use, for the University's benefit, any facility, resource or property (real or personal) of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others;
  - (f) to generate revenue for the purposes of funding the carrying out of its functions;

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- (g) to foster the general welfare and development of all enrolled students;
  - (h) to promote and encourage collaboration and consultation between the University and other institutions and authorities to ensure the greatest effectiveness and economy in expenditure and the most beneficial relationship between the University and other educational institutions within and outside the State;
  - (i) to serve the Western Australian, Australian and international communities and the public interest by —
    - (i) enriching cultural and community life; and
    - (ii) raising public awareness of international, scientific and artistic developments; and
    - (iii) promoting critical and free enquiry, informed intellectual discussion and public debate within the University and in the wider society;
  - (j) to provide whatever facilities relating to its functions the Council thinks necessary or conducive to their attainment.
- (2) The University has all the powers, rights and privileges it reasonably needs to enable it to carry out its functions.
- (3) The University may carry out its functions and exercise its powers, including the power to enter into business arrangements, within or outside the State.

*[Section 7 inserted by No. 32 of 2016 s. 54.]*

## **Part III — The Council of the University**

*[Heading amended by No. 63 of 1990 s. 19.]*

### **8. The Council**

The governing authority of the University is the Council.

*[Section 8 amended by No. 63 of 1990 s. 19.]*

### **9. Constitution of the Council**

(1) The Council consists of the following members —

- (a) 3 persons appointed by the Governor on the recommendation of the Minister;
- (b) the person for the time being the chairperson of the Academic Board;
- (c) the Vice-Chancellor;
- (d) one person who is a member of the academic staff of the University and who is elected by the academic staff of the University in the manner prescribed by Statute;
- (e) one person who is a member of the non-academic salaried staff of the University, and who is elected by the non-academic salaried staff of the University in the manner prescribed by Statute;
- (f) 2 persons who are enrolled students —
  - (i) one of whom is an undergraduate student and who is elected by the undergraduate students in the manner prescribed by Statute; and
  - (ii) one of whom is a postgraduate student and who is elected by the postgraduate students in the manner prescribed by Statute;
- (g) 2 persons who are Alumni of the University and who are elected by the Alumni of the University in the manner prescribed by Statute;

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- (h) not more than 5 persons appointed from time to time by co-option by the Council;
  - (i) if they are not already a member under paragraphs (a) to (h), the Chancellor.
- (2) The fact that a person holds an elective office (for example, an elective office of the Student Guild) does not disqualify that person being appointed or holding office under subsection (1).
- (3) The following persons are not eligible to be a member under subsection (1)(a) or (h) —
  - (a) a person who is a member of the staff or otherwise engaged by the University;
  - (b) an enrolled student.
- (4) The following persons are not eligible to be a member under subsection (1)(f) —
  - (a) a full-time member of the staff of the University;
  - (b) a part-time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full-time member of staff.
- (5) The following persons are not eligible to be a member under subsection (1)(g) —
  - (a) a full-time member of the staff of the University;
  - (b) a part-time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full-time member of staff;
  - (c) an enrolled student who is enrolled on a full-time basis.
- (6) Of the members —
  - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector); and

- (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector),

and the member mentioned in paragraph (b) may also be one of the members mentioned in paragraph (a).

*[Section 9 amended by No. 63 of 1990 s. 9 and 19; No. 22 of 1996 s. 16(4); No. 10 of 1998 s. 30(1); No. 36 of 1999 s. 247; No. 74 of 2003 s. 46(4); No. 8 of 2005 s. 15; No. 32 of 2016 s. 55.]*

**9A. Nominations Committee**

- (1) The Council must establish and maintain a committee of the Council called the Nominations Committee.
- (2) The Nominations Committee is to consist of not more than 6 members of the Council appointed by the Council.
- (3) The following members are not eligible to be appointed to the Nominations Committee —
  - (a) the Vice-Chancellor;
  - (b) the chairperson of the Academic Board;
  - (c) the member referred to in section 9(1)(d);
  - (d) the member referred to in section 9(1)(e);
  - (e) the members referred to in section 9(1)(f);
  - (f) the members referred to in section 9(1)(g).
- (4) The functions of the Nominations Committee are —
  - (a) to maintain lists of persons who are eligible and willing to be appointed to any vacancy or casual vacancy in the office of —
    - (i) any member of the Council who is appointed by the Governor or the Council; or
    - (ii) any member of an Advisory Board who is appointed by the Council;

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- (b) to recommend to the Minister suitable candidates to a vacancy or casual vacancy in the office of any member who is appointed under section 9(1)(a);
  - (c) to recommend to the Council suitable candidates for appointment by co-option under section 9(1)(h).
- (5) The fact that the Nominations Committee or the Council has not recommended a person for appointment under section 9(1) does not prevent the person from being appointed or holding office under section 9(1).
- (6) The Nominations Committee may regulate its own procedure, but it must comply with any direction given by Council.

*[Section 9A inserted by No. 32 of 2016 s. 56.]*

**10. Term of office**

- (1) Subject to section 11 —
- (a) a member appointed under section 9(1)(a) or (h) holds office for a period of 3 years, commencing on the day of their appointment, unless a shorter term of office is specified under subsection (4);
  - (b) a member elected under section 9(1)(d), (e) or (g) holds office for a period of 3 years, commencing on the day their election takes effect, unless a shorter term of office is specified under subsection (5);
  - (c) a member elected under section 9(1)(f) holds office for a period of one year commencing on the day their election takes effect, unless a shorter term of office is specified under subsection (5).
- (2) All retiring members are, unless otherwise disqualified, eligible for reappointment or re-election.
- (3) However —
- (a) a member elected under section 9(1)(f) is not eligible for re-election more than once;

- (b) a member other than a member elected under section 9(1)(f) is not eligible to be reappointed or re-elected on the expiry of a third successive term of office until 12 months have elapsed after that expiry;
  - (c) a member who is removed from office by the Council under section 11A is not eligible to be a member again until 5 years have elapsed since the removal.
- (4) The Governor or the Council may, when appointing a person as a member, specify a shorter term of office where an appointment for a shorter term is desirable to ensure that —
- (a) the terms of office of members expire at intervals that will produce reasonable continuity of membership; or
  - (b) the terms of office expire on dates that afford the convenience of uniformity.
- (5) The Council may, before an election is held for the purposes of section 9(1), specify that the election of a person is for a shorter term of office where election for a shorter term is desirable for a reason referred to in subsection (4).

*[Section 10 inserted by No. 32 of 2016 s. 56.]*

**10A. Members' duties**

Schedule 1 Division 1 has effect.

*[Section 10A inserted by No. 8 of 2005 s. 18.]*

**11. Vacation of office**

The office of a member becomes vacant if —

- (a) the member resigns their office by written notice given to the Minister; or
- (b) the member is a person in respect of whom an administration order is in force under the *Guardianship and Administration Act 1990* Part 6; or

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- (c) the member is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (d) the member is convicted of an indictable offence; or
- (e) the member is removed from office by the Council under section 11A; or
- (f) the member is, or becomes, disqualified from managing corporations under the *Corporations Act 2001* (Commonwealth) Part 2D.6; or
- (g) the member is absent without leave of the Council from 3 consecutive meetings of the Council; or
- (h) the member ceases to hold any qualification required for becoming or being a member; or
- (i) the member dies.

*[Section 11 inserted by No. 32 of 2016 s. 57.]*

**11A. Removal of members for breach of certain duties and suspension pending removal**

- (1) The Council may —
  - (a) remove from office a member for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3;
  - (b) suspend from office a member who is alleged to have breached a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 until the motion for removal is put to the vote.
- (2) The removal or suspension from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed or suspended from office for breach of duty) was duly given.
- (3) Despite section 14(1), the removal or suspension of a member from office may be effected only if the motion for removal or suspension is supported by a majority comprising enough of the members for the time being for their number to be at least



two-thirds of the total number of offices (whether vacant or not) of member.

- (4) The motion for removal or suspension must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal or suspension refers does not attend the meeting, a reasonable opportunity to reply to the motion is to be taken to have been given if notice of the meeting has been duly given.
- (6) The Council cannot remove or suspend from office a member for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 except in accordance with this section.
- (7) A person must not vote on any question relating to the person's removal or suspension from office by the Council for the breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3, or be present while the matter is being considered at a meeting.
- (8) This section applies only in relation to a breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 that occurs after the *Universities Legislation Amendment Act 2005* comes into operation<sup>1</sup>.
- (9) A person does not breach a duty mentioned in Schedule 1 clause 1(1)(a), (b) or (c) by doing or omitting to do anything in compliance with a direction given to the person in exercise of a power conferred by a written law.
- (10) Subsection (9) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to Schedule 1 clause 1(1)(a), (b) or (c) and the direction did not require that it be done in that manner.
- (11) The suspension from office of a member does not create a vacancy in that office.

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*[Section 11A inserted by No. 8 of 2005 s. 20; amended by No. 32 of 2016 s. 58.]*

**11B. Casual vacancies**

If a casual vacancy occurs in the office of a member, the vacancy is to be filled in the same way as if that member's term of office had expired.

*[Section 11B inserted by No. 32 of 2016 s. 59.]*

**12. Chancellor and meetings of Council**

- (1) The members shall from time to time as occasion arises —
  - (a) elect a person, whether a member or not, to be the Chancellor of the University for a term not exceeding 3 years;
  - (b) elect one of their number to be the Deputy Chancellor of the University for a term not exceeding 3 years.
- (2) A person whose whole or principal employment is that of a member of the staff is not eligible to be elected Chancellor or Deputy Chancellor of the University.
- (3) The Chancellor shall preside at all meetings of the Council at which he is present.
- (4) At any meeting of the Council at which —
  - (a) the Chancellor is not present, the Deputy Chancellor of the University shall preside at the meeting;
  - (b) the Chancellor and the Deputy Chancellor of the University are not present, the members present at the meeting shall elect a member to preside at that meeting,

and while so presiding the Deputy Chancellor of the University or the member, as the case may be, has all the powers and duties of the Chancellor.

- (5) Subject to the Statutes, the Council shall hold such meetings as are necessary for the performance of its functions.

- (6) Subject to the Statutes, the Chancellor may at any time convene a meeting of the Council and shall convene a meeting when requested in writing by the Minister to do so or when so requested by any 3 members.
- (7) Subject to this Act and the Statutes the Council may regulate its own procedure in such manner as it thinks fit.  
*[Section 12 amended by No. 63 of 1990 s. 19; No. 32 of 2016 s. 60.]*

**13. Disclosure of interests**

Schedule 1 Division 2 has effect.

*[Section 13 inserted by No. 8 of 2005 s. 21.]*

**14. Quorum**

- (1) At a meeting of the Council —
  - (a) not less than one-half of the total number of members for the time being forms a quorum;
  - (b) a question arising at the meeting shall be determined by a majority of the valid votes of the members present.
- (2) No act or thing done by the Council is invalidated, prejudiced or affected by reason of any vacancy in the membership of the Council or any failure to appoint or elect any member, or any defect in the appointment or election of any member so long as a quorum of the Council remains.

**15A. Remuneration and allowances for Council members**

- (1) A member of the Council is entitled to be paid the remuneration (if any) and allowances (if any) determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.
- (2) Any remuneration and allowances payable are to be paid out of the funds available to the Council under section 36.  
*[Section 15A inserted by No. 32 of 2016 s. 61.]*

**15.        Delegation by Council**

- (1) The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution delegate all or any of its powers, authorities, duties and functions under this Act, except its powers in relation to the making of Statutes or by-laws, to any board or committee constituted under this Act or a Statute or to a member or to a committee consisting of members appointed by the Council or to any officer or officers of the University.
- (2) The Council may by resolution revoke a delegation given under this section.
- (3) A resolution delegating a power, authority, duty or function may authorise the delegate to further delegate the delegated power, authority, duty or function to a person or body.
- (4) A subdelegation under this section must be in writing.
- (5) The *Interpretation Act 1984* sections 58 and 59 apply to and in relation to a subdelegation under this section in the same way that they apply to and in relation to a delegation given under this section.

*[Section 15 amended by No. 63 of 1990 s. 19; No. 32 of 2016 s. 62.]*

## **Part IV — Functions, duties and powers of the Council**

### **16. Functions and duties of the Council**

- (1) Subject to this Act the Council shall —
- (a) perform any function or duty conferred or imposed upon the University under this Act;
  - (b) act in all matters concerning the University in such manner as appears to it best calculated to promote the objects and interests of the University; and
  - (c) control and manage the operation, affairs, concerns and property of the University.

*[(2) deleted]*

*[Section 16 amended by No. 48 of 1989 s. 22; No. 63 of 1990 s. 10 and 19.]*

### **17. Powers of Council**

- (1) Subject to this Act and the Statutes the Council has power to do all things necessary or convenient to be done for or in connection with the operation, affairs, concerns and property of the University and, in particular, the Council —
- (a) may, on behalf of the University, enter into and execute agreements with government departments and with other tertiary or post-secondary education institutions for the purpose of the academic or other salaried staffing of the University and for the provision of the education that the University is authorised by this Act to provide; and
  - (b) may, on behalf of the University, enter into and execute contracts for the planning, construction, modification and maintenance of buildings and for minor works and services; and
  - (c) may provide courses of study appropriate to a university, or other tertiary courses, on a full-time or part-time basis at such place or places as are determined by the Council

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and may with the approval of the Minister declare that any such place or places constitute a campus of the University; and

- (d) may establish guidelines for the use of University facilities by the community and levy and collect appropriate charges for such use; and
  - (e) may, on behalf of the University, award —
    - (i) appropriate degrees, diplomas and certificates; and
    - (ii) appropriate honorary awards, to enrolled students and other persons; and
  - (fa) may provide residential accommodation for members of staff, or enrolled students, or both; and
  - (f) may exercise any other power vested in it under this Act.
- (2) Any degree, diploma or certificate or honorary award of the University awarded by the Council shall be evidenced by a certificate given in accordance with the Statutes.

*[Section 17 amended by No. 48 of 1989 s. 23; No. 63 of 1990 s. 11 and 19; No. 32 of 2016 s. 63.]*

**17A. Relief of members from liability**

If, in any civil proceeding against a person who is or was a member for negligence, default, breach of trust or breach of duty in the person's capacity as a member, it appears to the court that the person —

- (a) is, or may be, liable in respect of the negligence, default or breach;
- (b) has acted honestly; and
- (c) ought fairly to be excused for the negligence, default or breach having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

*[Section 17A inserted by No. 8 of 2005 s. 22.]*

**18. Academic Board**

- (1) There shall be an Academic Board of the University.
- (2) The constitution of the Academic Board, the number of persons who shall comprise the Academic Board from time to time, the method of their appointment and selection, their term of office, the conduct of proceedings and all other matters in the opinion of the Council necessary or desirable to ensure the effective exercise of the functions of the Academic Board may be prescribed by Statute.
- (3) The functions of the Academic Board shall include —
  - (a) the discussion and submission to the Council of opinions and recommendations on academic policy, academic development, the admission of students, instruction, studies and examinations, research, the admission to degrees, the discipline of the University and any other matters which in the opinion of the Academic Board are relevant to the objects of this Act;
  - (b) the furnishing to the Council of reports on all matters referred to it by the Council for consideration; and
  - (c) such other acts or matters as may be conferred or imposed by Statute,

and the Academic Board shall have all such powers as may be necessary to discharge its functions.

*[Section 18 inserted by No. 63 of 1990 s. 12.]*

**19. ECU South West Campus (Bunbury)**

- (1) On and after the day on which section 46 of the *Statutes (Repeals and Minor Amendments) Act 2003* comes into operation<sup>1</sup> (in this section referred to as *the commencement*

*day*), the campus of the University constituted under this Act, as in force immediately before the commencement day, and known as the Bunbury Campus of the University continues to be so constituted but shall be known as the ECU South West Campus (Bunbury) of the University.

- (2) A reference to the Bunbury Campus of the University, or to the Bunbury Institute of Advanced Education, whether by the use of that name or a similar or abbreviated form of that name —
- (a) in a written law passed or made before the commencement day;
  - (b) in any document or other instrument made, executed, entered into or done before the commencement day; or
  - (c) made before the commencement day in any other manner,

shall be construed as if it had been amended to be a reference to the ECU South West Campus (Bunbury) of the University, unless because of the context it would be inappropriate to construe the reference in that manner.

*[Section 19 inserted by No. 74 of 2003 s. 46(2).]*

**20. ECU South West Campus (Bunbury) Advisory Board**

- (1) There shall be an ECU South West Campus (Bunbury) Advisory Board.
- (2) The Council may make Statutes —
- (a) prescribing the method of the appointment and selection of the members of the ECU South West Campus (Bunbury) Advisory Board by the Council;
  - (b) prescribing the terms of office of the members of the ECU South West Campus (Bunbury) Advisory Board;
  - (c) prescribing the circumstances in which an office of member of the ECU South West Campus (Bunbury) Advisory Board becomes vacant;



- (d) providing for meetings of the ECU South West Campus (Bunbury) Advisory Board;
  - (e) providing for any other matters necessary or desirable to ensure the effective exercise of the functions of the ECU South West Campus (Bunbury) Advisory Board.
- (3) The functions of the ECU South West Campus (Bunbury) Advisory Board are —
- (a) to provide the Council with strategic advice in relation to the ECU South West Campus (Bunbury) and education matters relevant to the south-west region of the State; and
  - (b) any other functions relating to the ECU South West Campus (Bunbury) and education matters relevant to the south-west region of the State determined by the Council.
- (4) The ECU South West Campus (Bunbury) Advisory Board is subject to the direction and control of the Council.

*[Section 20 inserted by No. 63 of 1990 s. 12; amended by No. 74 of 2003 s. 46(3) and (4); No. 32 of 2016 s. 64.]*

*[21-23. Deleted by No. 63 of 1990 s. 12.]*

**24. Western Australian Academy of Performing Arts**

- (1) The Western Australian Academy of Performing Arts shall be deemed to have been established as an academy of the University under that name on the day that this Act comes into operation.
- (2) The Council may make Statutes providing for the control and management of the affairs and concerns of the Academy.

*[(3) deleted]*

*[Section 24 amended by No. 63 of 1990 s. 19; No. 32 of 2016 s. 65.]*

**25. Advisory Board of Academy**

- (1) There is to be an Advisory Board of the Academy.
- (2) Without limiting section 24(2), the Council may make Statutes —
  - (a) prescribing the method of the appointment and selection of the members of the Advisory Board of the Academy by the Council;
  - (b) prescribing the terms of office of the members of the Advisory Board of the Academy;
  - (c) prescribing the circumstances in which an office of member of the Advisory Board of the Academy becomes vacant;
  - (d) providing for meetings of the Advisory Board of the Academy;
  - (e) providing for any other matters necessary or desirable to ensure the effective exercise of the functions of the Advisory Board of the Academy.
- (3) The functions of the Advisory Board of the Academy are —
  - (a) to provide the Council with strategic advice in relation to the Academy; and
  - (b) any other functions relating to the Academy determined by the Council.
- (4) The Advisory Board of the Academy is subject to the direction and control of the Council.

*[Section 25 inserted by No. 32 of 2016 s. 66.]*

**25A. Remuneration and allowances for Advisory Board members**

- (1) A member of an Advisory Board is entitled to be paid the remuneration (if any) and allowances (if any) determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.

- (2) Any remuneration and allowances payable are to be paid out of the funds available to the Council under section 36.

*[Section 25A inserted by No. 32 of 2016 s. 66.]*

## **Part V — Statutes**

### **26. Power to make Statutes**

- (1) The Council may make Statutes, not inconsistent with this Act, with respect to all matters pertaining to the University and in particular may make Statutes with respect to —
- (a) the management, good government and discipline of the University; and
  - (b) the use and custody of the common seal of the University, and the functions of the Council that may be exercised without the use of the common seal for that purpose; and
  - (c) the organization and supervision of the teaching of enrolled students; and
  - (d) the academic and other staff, officers and employees of the University; and
  - (e) the manner and time of convening, holding and adjourning the meetings of the Council, the manner of voting at those meetings, the powers and duties of the Chancellor, the conduct and record of the business, the appointment of committees of the Council and the quorum, powers and duties of those committees; and
  - (f) the entrance standards for students; and
  - (g) the granting of appropriate degrees, diplomas and certificates or honorary awards by the Council; and
  - (h) the granting of scholarships, exhibitions, bursaries and prizes; and
  - (i) the fees to be charged for courses of study or instruction, examinations, degrees, diplomas and certificates of the University and for such other facilities or privileges of the University as are prescribed; and
  - (ja) an annual amenities and services fee in accordance with section 41A; and

- (jb) the matters required by section 41B to be defined or prescribed by Statute; and
  - (j) the admission of graduates and students of other educational institutions to any corresponding status in the University without examination; and
  - (k) the recognition, instead of or for the purpose of any examination or course of study, of any course of study completed or examination passed in any educational institution or under the auspices of any professional association or of any practical work performed in a field approved by the Council; and
  - (l) the establishment by the Council of residential accommodation for members of the staff, or enrolled students, or both, and the management, control and closing of any residential accommodation; and
  - (m) the affiliation of residential accommodation for members of the staff, or enrolled students, or both, where the residential accommodation is not under the control of the Council; and
  - (na) the licensing and supervision of residential accommodation for members of the staff, or enrolled students, or both, and for the revocation of the licensing of that accommodation; and
  - (n) the control and investment of the property of the University; and
  - [(o) deleted]*
  - (p) any matter authorised or directed by this Act to be prescribed by Statute in relation to the University.
- (2) Without limiting the powers conferred by subsection (1) the Council may make Statutes furthering or facilitating the objects or operation of this Act with respect to long service leave entitlements of members of the staff and in particular providing for lump sum payments, instead of accrued and *pro rata* long service leave entitlements, to or in respect of persons who cease

to be members of the staff, but so that the calculation of any such payment shall be based on the rate of salary of the person at the date of his ceasing to be a member of the staff; and so that no payment that exceeds the equivalent of 12 months' salary shall be paid under the Statute.

- (3) Without limiting any of the powers conferred by subsection (1), a Statute with respect to the discipline of the University may —
- (a) prescribe disciplinary offences and disciplinary powers in relation thereto including penalties that may be imposed for the respective offences; and
  - (b) provide that penalties may be partly of one kind and partly of another but so that no monetary penalty for any one disciplinary offence exceeds \$1 000; and
  - (c) prescribe circumstances under which a penalty may be modified or suspended; and
  - (d) provide, in addition to penalties, for restitution to the University not exceeding \$1 000 for loss, damage or destruction of university property arising out of the commission of a disciplinary offence; and
  - (e) prescribe rights of appeal against decisions made in the exercise or purported exercise of disciplinary powers; and
  - (f) prescribe the persons, classes of persons and bodies of persons who may —
    - (i) make a complaint of a disciplinary offence;
    - (ii) exercise all or any of the prescribed disciplinary powers; or
    - (iii) determine all or any appeals against decisions made in the exercise or purported exercise of disciplinary powers;and
  - (g) prescribe the practice and procedure in relation to —
    - (i) making a complaint of a disciplinary offence;

- (ii) exercising disciplinary powers; and
  - (iii) determining appeals against decisions made in the exercise or purported exercise of disciplinary powers;
- and
- (h) prescribe the circumstances under which costs may be awarded to a person the subject of a complaint of a disciplinary offence, prescribing the persons, classes of persons or bodies of persons who may award and fix those costs; and providing for payment thereof out of University funds; and
  - (i) prescribe the manner in which penalties may be enforced and, in the case of monetary penalties or amounts for restitution, recovered; and
  - (j) prescribe all such other matters as are necessary or expedient to be prescribed for the maintenance of the good order and discipline of the University.
- (4) Without limiting section 30(4), the Vice-Chancellor may delegate to any person, class of persons or body of persons any of the following powers conferred on the Vice-Chancellor under a Statute —
- (a) a disciplinary power;
  - (b) a power to hear and determine appeals from decisions made in the exercise or purported exercise of disciplinary powers;
  - (c) a power to award or fix costs.
- (5) A Statute or a rule made under a Statute —
- (a) may be limited in its application to time, place or circumstances; and
  - (b) may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.

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- (6) A Statute made under this section may be revoked or amended by a subsequent Statute so made.
- (7) The Statutes may provide for —
  - (a) empowering the Council to make rules, not inconsistent with this Act or with any Statute for regulating, or providing for the regulation of, any specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes, and any of those rules shall have the same force and effect as a Statute;
  - (b) the manner of promulgation of those rules; and
  - (c) the revocation or amendment of any of those rules.
- (8) The production of a verified copy of any rule made under subsection (7) under the common seal of the University is evidence of the making and authenticity of the rule in all courts and before all persons acting judicially.

*[Section 26 amended by No. 63 of 1990 s. 14 and 19; No. 32 of 2016 s. 67.]*

**27. Approval, publication, disallowance and proof of Statutes**

- (1) A Statute made by the Council —
  - (a) must be sealed with the common seal of the University; and
  - (b) must be submitted to the Governor for approval; and
  - (c) if approved by the Governor, must be published in the *Gazette*; and
  - (d) takes effect on the later of —
    - (i) the day after publication in the *Gazette*; or
    - (ii) if a later day is specified for that purpose in the Statute, that day.
- (2) The *Interpretation Act 1984* section 42 applies to a Statute approved and published under subsection (1) as if the Statute were a regulation.



- (3) In any proceedings in any court or before any person acting judicially, any of the following is sufficient evidence of a Statute —
- (a) a copy of the Statute under the common seal of the University;
  - (b) a document purporting to be a copy of the Statute and to have been printed by the Government Printer;
  - (c) a copy of the *Gazette* purporting to contain a copy of the Statute.

*[Section 27 inserted by No. 32 of 2016 s. 68.]*

**28A. Statutes to be made readily available to public**

- (1) The Council must ensure that the following are readily available to the public by whatever means the Council considers appropriate —
- (a) all Statutes approved and published under section 27(1);
  - (b) all Statutes that are in effect immediately before the *Universities Legislation Amendment Act 2016* section 68 comes into operation.
- (2) Publication in the *Gazette* is not sufficient compliance with subsection (1).
- (3) Subsection (1) ceases to apply to a Statute once it ceases to be in effect.

*[Section 28A inserted by No. 32 of 2016 s. 68.]*

## **Part VI — University lands**

*[Heading amended by No. 63 of 1990 s. 19.]*

### **Division 1 — Vesting of land in University and by-laws applicable to University lands**

*[Heading inserted by No. 32 of 2016 s. 69.]*

#### **28. Land may be vested in the University**

- (1) On the recommendation of the Minister the Governor, by Order in Council, may transfer to the care, management and control of the University or may vest in the University any land that is —
  - (a) reserved under Part 4 of the *Land Administration Act 1997* as sites for schools and other buildings for the purposes of education; or
  - (b) vested in the Minister by virtue of section 215 of the *School Education Act 1999*,

and on the making of the Order in Council the land therein specified shall vest accordingly.

- (2) The University shall hold and use any land vested in the University under this Act subject to this Act and for the purposes of this Act.
- (3) Where any land in the care, management and control of, or vested in, the University under this Act is no longer required for the purposes of this Act, the Governor, by Order in Council, may revest it in the State.
- (4) The restrictions imposed by section 5(2)(ea) do not apply to the lease of any part of the land referred to in section 5(2)(ea) if the purpose of the lease is the provision of residential accommodation in accordance with section 17(1)(fa).

*[Section 28 amended by No. 63 of 1990 s. 15 and 19; No. 31 of 1997 s. 24; No. 36 of 1999 s. 247; No. 32 of 2016 s. 70.]*

**29. Power to make by-laws applicable to lands**

(1A) In this section —

*authorised person* means —

- (a) a police officer; or
- (b) a person authorised under subsection (1B) to be an authorised person for the purposes of the subsection in which the term is used;

*contractor* means —

- (a) an individual who works under a contract for services for the University; or
- (b) an employee of a body that provides services to the University under a contract.

(1B) The Vice-Chancellor may, in writing —

- (a) designate a member of the staff of the University to be an authorised person for the purposes of either or both of subsection (3)(k) or (7A); and
- (b) authorise a contractor to be an authorised person for the purposes of either or both of subsection (3)(k) or (7A); and
- (c) revoke a designation or authorisation made under this subsection.

(1C) A designation or authorisation of a person under subsection (1B) ceases to have effect if —

- (a) the designation or authorisation is revoked; or
- (b) the person ceases to be a member of the staff of the University or a contractor.

(1) By-laws made by the Council under this section apply only within the boundaries of University lands.

(2) For the purposes of this section and by-laws made by the Council under this section, the Governor may, by proclamation, —

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- (a) declare any land vested in, held by, leased to or under the care, management and control of the University to be University lands; or
  - (b) alter the boundaries of any University lands; or
  - (c) declare that any land shall cease to be University lands, and the by-laws shall thereupon apply to that land accordingly and to any building, structure or erection on that land.
- (3) The Council may, with the approval of the Governor, make by-laws for the purpose of managing, preserving, and protecting University lands and for the purpose of regulating the terms and conditions on which such lands may be visited or used by any persons whomsoever, and the conduct of such persons when on or upon such lands, and in particular may by by-laws —
- (a) prohibit or regulate the admission to such lands of persons, vehicles or animals; and
  - (b) prescribe the times when and the purposes for which such lands may be used, and the times when and the purposes for which the same shall be open or closed, and prohibit the use thereof or access thereto at any other times, or for any other purpose; and
  - (c) prescribe fees to be charged to all or any persons for admission to or use of such lands; and
  - (d) provide for the issue to all or any persons using such lands of tickets and requiring the production of such tickets by such persons if and whenever required by any police officer, or any member of the staff of the University; and
  - (e) regulate the conduct of persons using or being in or upon such lands; and
  - (f) prohibit any nuisance, or any offensive, indecent, or improper act, conduct, or behaviour on such lands; and
  - (g) prohibit the use of abusive or insulting language on such lands; and

- (h) prohibit damage or injury to or interference with such lands, or any tree, shrub, hedge, plant or flower thereon, or any fixed or movable article thereon; and
- (i) prohibit the writing or printing of any indecent words, or the writing, printing, or drawing, or affixing of any indecent or obscene picture or representation on such lands, or on any fence, wall, tree, shrub, or hedge thereon; and
- (j) prescribe, in respect of an alleged breach of the by-laws involving a vehicle, the circumstances under which the owner of the vehicle is deemed to be the driver or person in charge of the vehicle at the time of the alleged breach; and
- (k) prescribe the circumstances under which an authorised person may remove a vehicle, or cause it to be removed, from University lands to a specified place, prescribe the authorised person's further powers in relation thereto, prescribe the scale of charges to be paid to recover the vehicle from that place, and authorise the Council to hold the vehicle until the prescribed charges are paid; and
- (l) prescribe a modified penalty or modified penalties payable to the University by a person or one of a class of persons who does not contest an allegation that the person committed any specified breach of the by-laws, and provide that the due payment of a modified penalty is a defence to a charge of the breach in respect of which that modified penalty was paid; and
- (m) authorise any police officer or any member of the staff of the University to remove from such lands all persons guilty of any breach of a by-law, and to prohibit the obstruction of any such police officer or member of the staff; and
- (n) require any person using such lands to give the person's name and address, whenever required so to do by any

police officer, or any member of the staff of the University; and

- (o) generally provide for the carrying out of the purposes of this Act, or any Statute,

but no such by-law shall be contrary to the express provisions of this Act or of any Statute.

*[(4) deleted]*

(5) The by-laws —

(a) may be limited in their application to time, place or circumstances; and

(b) may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.

(6) A by-law may impose a penalty of a fine not exceeding \$1 000 for a breach of the by-law.

(7A) Proceedings for the breach of a by-law may be taken by an authorised person in the name of the authorised person.

(7) In any proceedings for any contravention of any by-law the allegation in the prosecution notice that any place was on University lands shall be sufficient evidence of the fact alleged in the absence of proof to the contrary.

(8) No by-law takes away or restricts any liability, civil or criminal, arising under any provision of any Act other than this Act or at common law.

(9) A breach of a by-law by an enrolled student is a disciplinary offence proceedings for which may be commenced, heard, and determined under the disciplinary Statutes and rules of the University instead of before a court of summary jurisdiction.

(10) By-laws made under this section apply to and in respect of University lands that are leased (whether under an approval

given under section 30I or otherwise) except to the extent that the application of the by-laws, or any provision of a by-law, to the leased lands is expressly excluded by the lease.

*[Section 29 amended by No. 63 of 1990 s. 19; No. 78 of 1995 s. 34; No. 84 of 2004 s. 80; No. 32 of 2016 s. 71.]*

## **Division 2 — Leasing University land for commercial purposes**

*[Heading inserted by No. 32 of 2016 s. 72.]*

### **Subdivision 1 — Preliminary**

*[Heading inserted by No. 32 of 2016 s. 72.]*

#### **30A. Terms used**

In this Division —

***advance determination*** means an advance determination granted under section 30H;

***approval*** means an approval granted under section 30I;

***commercial arrangement*** means any of the following —

- (a) a company;
- (b) a partnership;
- (c) a trust;
- (d) a joint venture;
- (e) an arrangement for sharing profits;
- (f) an arrangement for sponsorship;

***commercial purpose*** means obtaining income for the University through the leasing of University land, if the land is not leased for the purposes of the University or a purpose that is incidental to the purposes of the University;

***lease*** includes sublease;

***limited company*** has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

*participate* includes form, promote, establish, enter into, manage, dissolve and wind-up;

*participate in a commercial arrangement* includes —

- (a) acquire, hold and dispose of shares, units or other interests in, or relating to, a commercial arrangement; and
- (b) exercise any right conferred on the University to appoint a director of, or hold office in, a commercial arrangement; and
- (c) do anything incidental to participating in a commercial arrangement;

*payment agreement* means an agreement made under section 30L;

*University land* means land vested in the University under section 28;

*university development proposal* means a proposal in respect of which the University intends to seek an approval under section 30I to do either or both of the things set out in section 30D(1).

*[Section 30A inserted by No. 32 of 2016 s. 72.]*

**30B. Object of this Division**

The object of this Division is to enable the University to seek and obtain the Minister's approval to lease University land for purposes that would not otherwise be authorised by this Act.

*[Section 30B inserted by No. 32 of 2016 s. 72.]*

**30C. Effect of Division on University functions, powers and obligations**

- (1) This Division does not limit —
  - (a) sections 5 and 7; or
  - (b) any function, power, right, privilege, immunity or obligation of the University under —



- (i) this Act, another written law or a law of the Commonwealth or of another State or a Territory; or
  - (ii) the principles and rules of common law and equity to the extent that they have effect in this State from time to time.
- (2) Nothing in this Division is to be taken to impose any requirement on the University to seek or obtain the Minister's approval to lease any University land.
- (3) Nothing in this Division affects the University's obligation under section 5(2)(ea) to obtain the Minister's approval to the grant of a lease for a term that exceeds 21 years.

*[Section 30C inserted by No. 32 of 2016 s. 72.]*

**Subdivision 2 — Power to lease University land for commercial purposes**

*[Heading inserted by No. 32 of 2016 s. 72.]*

**30D. University may lease University land for commercial purposes with Ministerial approval**

- (1) With the approval of the Minister, the University can —
- (a) enter into a transaction that has a commercial purpose; or
  - (b) participate, in the State or elsewhere, in any commercial arrangement that has a commercial purpose.
- (2) An approval can authorise the University to enter into a transaction, or participate in a commercial arrangement, either —
- (a) directly; or
  - (b) through a wholly-owned subsidiary (as defined in the *Corporations Act 2001* (Commonwealth) section 9) of the University.

- (3) An approval to lease University land can be granted on the basis that subleases of that land (whether all subleases, or only subleases of a particular class or granted in particular circumstances) can be granted without the need to seek or obtain an approval to the granting of those subleases.
- (4) Subsection (3) is subject to any conditions attached to the approval.
- (5) An approval —
  - (a) confers power, for the purposes of this Act, on the University to do the thing authorised by the approval; but
  - (b) does not exempt the University or any other person from compliance with, or authorise the University or any other person to do or omit to do anything contrary to —
    - (i) any other written law or any law of the Commonwealth or of another State or a Territory; or
    - (ii) any obligation of the University or any other person, however that obligation arises.

*[Section 30D inserted by No. 32 of 2016 s. 72.]*

**30E. Effect of approval to lease University land**

- (1) To the extent that an approval authorises the University to lease University land, land leased in accordance with the approval is to be taken to be used for the purposes of the University or for purposes incidental to the purposes of the University for the purposes of —
  - (a) compliance with any conditions, restrictions or limitations (however arising) attaching to the vesting of that land in the University or the holding, care, control or management, by the University, of that land; and
  - (b) any provision of any written law that specifies that something is to happen or not to happen, or provides for some other consequence, if that land is not used, or

ceases to be used, for the purposes of the University or for purposes incidental to the purposes of the University.

- (2) The *Land Tax Assessment Act 2002* section 33 overrides this section.

*[Section 30E inserted by No. 32 of 2016 s. 72.]*

**30F. Approval in principle of university development proposal**

- (1) The University may apply to the Minister for the approval in principle of a university development proposal.
- (2) The university development proposal submitted for approval in principle must describe what the University intends to seek an approval under section 30I for, including —
- (a) details of the University land that is to be leased; and
  - (b) the purpose for which the land is to be leased.
- (3) If the University applies for an approval in principle —
- (a) the application must be made in the manner and form, and contain the information, that the Minister requires; and
  - (b) the Minister may request the University to provide any additional information that the Minister considers necessary for the proper consideration of the application; and
  - (c) the Minister may grant or refuse to grant the approval in principle.
- (4) The Minister must —
- (a) notify the University in writing of the Minister's decision on the application; and
  - (b) if the decision is to refuse to grant the approval in principle, include in that notification the reasons for the refusal.

*[Section 30F inserted by No. 32 of 2016 s. 72.]*

**30G. Application for advance determination of approval**

- (1) The University may apply to the Minister for a determination that, if an application is made for an approval under section 30I in relation to a university development proposal, the approval will be granted.
- (2) In order to apply for an advance determination, it is not necessary that the University has applied for or obtained an approval in principle under section 30F in relation to the university development proposal.
- (3) The university development proposal submitted for advance determination must describe the transaction or commercial arrangement for which the University intends to seek an approval under section 30I, including —
  - (a) details of the University land that is to be leased; and
  - (b) the purpose for which the land is to be leased; and
  - (c) the financial details of the proposal, including the amount of the investment to be made by the University, the proposed lessee and any other parties involved.
- (4) If approval in principle was previously obtained under section 30F in relation to the proposal, the application for the advance determination must identify any material difference between the proposal approved in principle and the proposal submitted for advance determination.
- (5) If the University applies for an advance determination —
  - (a) the application —
    - (i) must be made in the manner and form, and contain the information, that the Minister requires; and
    - (ii) if required by the Minister, must be accompanied by a payment agreement;and

- (b) the Minister may request the University to provide any additional information that the Minister considers necessary for the proper consideration of the application.

*[Section 30G inserted by No. 32 of 2016 s. 72.]*

**30H. Advance determination of approval**

- (1) If the University applies under section 30G for an advance determination in relation to a university development proposal, the Minister may grant or refuse to grant the advance determination.
- (2) The Minister must grant the advance determination if —
  - (a) approval in principle was previously obtained under section 30F in relation to the proposal; and
  - (b) the Minister is satisfied that, in respect of the matters referred to in section 30F(2)(a) and (b), there is no material difference between the proposal approved in principle and the proposal submitted for advance determination; and
  - (c) the Minister is satisfied with the application submitted in relation to the proposal.
- (3) The Minister must —
  - (a) notify the University in writing of the Minister's decision on the application; and
  - (b) if the decision is to refuse to grant the advance determination, include in that notification the reasons for the refusal.
- (4) In granting an advance determination, the Minister may specify a time after which the advance determination lapses.
- (5) Before the advance determination lapses, the Minister may, at the request of the University, by notice in writing to the University, extend the period for which the advance determination is to be in force.

*[Section 30H inserted by No. 32 of 2016 s. 72.]*

**30I. Approvals**

- (1) The University may apply to the Minister for approval to do either or both of the things set out in section 30D(1).
- (2) If the University applies for an approval —
  - (a) the application —
    - (i) must be made in the manner and form, and contain the information, that the Minister requires; and
    - (ii) if required by the Minister, must be accompanied by a payment agreement;
  - and
  - (b) the Minister may request the University to provide any additional information that the Minister considers necessary for the proper consideration of the application.
- (3) In order to apply for an approval, it is not necessary that the University has applied for or obtained an approval in principle under section 30F, or an advance determination, in relation to the matter for which the approval is sought.
- (4) The Minister may grant or refuse to grant the approval.
- (5) However, the Minister must grant the approval if the Minister is satisfied that —
  - (a) an advance determination granted under section 30H is in force in respect of the matter for which the approval is sought; and
  - (b) there is no material deviation from the application for the advance determination.
- (6) For the purposes of subsection (5)(b), there is a material deviation from the application for the advance determination if any of the following changes have occurred —

- (a) the total area of University land that is to be leased has increased by 20% or more;
- (b) the amount of the investment to be made by the University has increased or decreased by 20% or more.

*[Section 30I inserted by No. 32 of 2016 s. 72.]*

**30J. Notification of decision on application for approval**

- (1) The Minister must —
  - (a) notify the University in writing of the Minister's decision on an application for an approval; and
  - (b) if the decision is to refuse to grant the approval, include in that notification the reasons for the refusal.
- (2) The Minister may attach conditions to an approval and those conditions must be specified in the approval.

*[Section 30J inserted by No. 32 of 2016 s. 72.]*

**30K. Alteration of approval**

- (1) The Minister may, at the request of the University, vary or revoke the conditions attached to an approval or attach new or additional conditions.
- (2) The Minister cannot make changes to the terms of an approval under subsection (1) unless the University agrees to the changes, but —
  - (a) the Minister is not obliged to make any or all of the changes requested by the University; and
  - (b) the Minister may propose variations, alternatives or additions to the changes requested by the University; and
  - (c) the Minister may refuse to change the terms of an approval unless the University agrees to variations, alternatives or additions proposed by the Minister.

*[Section 30K inserted by No. 32 of 2016 s. 72.]*

**30L. Payment agreements**

- (1) If the University intends to apply for an advance determination or an approval, the Minister may enter into a written agreement with the University for the University to reimburse the State for the reasonable costs and expenses incurred by the Minister in considering the application.
- (2) If permitted by the regulations, those costs and expenses may include the reasonable costs and expenses incurred by, or by the Minister on behalf of, any person or body appointed to consider and report to the Minister on the application.
- (3) Regulations may make provision for and in relation to a payment agreement, including in connection with —
  - (a) the ambit of an agreement;
  - (b) the making of an agreement;
  - (c) the costs and expenses to be paid under an agreement, including as to the method of calculating the costs and expenses;
  - (d) the methods for resolving any dispute about the costs and expenses that are to be paid under the agreement.

*[Section 30L inserted by No. 32 of 2016 s. 72.]*

**30M. Minister may delegate functions under this Division**

- (1) In this section —

**Department** means the Department of the Public Service principally assisting the Minister in the administration of this Act.
- (2) The Minister may delegate to the chief executive officer of the Department all or any of the functions that the Minister has under this Division, other than this power of delegation.
- (3) A delegation made under subsection (2) must be in writing signed by the Minister.



- (4) If the chief executive officer performs a function that has been delegated to the chief executive officer under this section, the chief executive officer is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

*[Section 30M inserted by No. 32 of 2016 s. 72.]*

## **Part VII — Staff**

### **30. Vice-Chancellor**

- (1) The Council must appoint and may terminate the appointment of a Vice-Chancellor.
- (2) The Vice-Chancellor is the chief executive officer of the University.
- (3) The Vice-Chancellor holds office as such for the period and on the conditions the Council determines.
- (4) The Vice-Chancellor has powers and duties prescribed by Statute and, unless otherwise expressly provided, the Vice-Chancellor may delegate any of those powers and duties to any person or committee of persons.
- (5) In addition to or instead of the title of Vice-Chancellor, the Vice-Chancellor may use any other title that is —
  - (a) approved by the Council; or
  - (b) prescribed by Statute.
- (6) The use by the Vice-Chancellor, in accordance with subsection (5), of any title in addition to or instead of the title of Vice-Chancellor does not affect the validity of anything done or omitted to be done by, to or in relation to the Vice-Chancellor.

*[Section 30 inserted by No. 32 of 2016 s. 73.]*

### **31. Academic and other staff**

- (1) Subject to this Act, any relevant written law and any relevant industrial award or industrial agreement —
  - (a) the Council may appoint the academic and other staff of the University and other officers and engage employees for the University and may suspend or terminate the employment of any person so appointed or engaged;
  - (b) the terms and conditions of employment of the staff, officers and employees of the University, including the

salary or wages payable, are such terms and conditions as the Council determines.

- (2) Where the Minister, after consultation with the Public Sector Commissioner considers that a person appointed or engaged under subsection (1), other than a member of the academic staff, is in like employment with the University to any employment in the Public Service of the State, that person shall have like terms and conditions of employment with the University to those in the employment in the Public Service of the State.

*[Section 31 amended by No. 63 of 1991 s. 19; No. 39 of 2010 s. 89; No. 32 of 2016 s. 74.]*

**32. Continuation of existing rights**

- (1) Where a person appointed or engaged under section 30 or 31 was immediately before being so appointed or engaged, an officer of the Public Service of the State, an officer appointed under the *Education Act 1928*<sup>2</sup> or section 235(1)(c) of the *School Education Act 1999* or a member of the staff of a college under the *Colleges Act 1978*<sup>4</sup> or the *Vocational Education and Training Act 1996* he retains his existing and accruing rights and in particular his rights in relation to sick leave, long service leave, retirement and his rights if any under the *Superannuation and Family Benefits Act 1938*<sup>5</sup> or the *Government Employees Superannuation Act 1987*<sup>6</sup>.
- (2) A person appointed or engaged under section 30 or 31, other than a person referred to in subsection (1), shall retain his rights, if any, under the *Superannuation and Family Benefits Act 1938*<sup>5</sup> or the *Government Employees Superannuation Act 1987*<sup>6</sup>.

*[Section 32 amended by No. 77 of 1985 s. 12; No. 36 of 1999 s. 247.]*

*[33. Deleted by No. 1 of 1995 s. 35.]*

**34. Superannuation**

- (1) The Council may —

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- (a) establish and maintain a superannuation scheme; or
- (b) join or participate with other educational institutions in a superannuation scheme,

to make financial provision in respect of the retirement, invalidity or death of such members of the staff of the University as the Council decides may be members of the superannuation scheme and as become such members.

(2) The Council may —

- (a) amend a superannuation scheme established under subsection (1)(a); or
- (b) agree to the amendment of a superannuation scheme in which the Council has joined or participates under subsection (1)(b),

but any such amendment shall not prejudice any right that has accrued under the superannuation scheme concerned before the amendment.

(3) A member of the staff of the University whom the Council decides may be a member of a superannuation scheme referred to in subsection (1) is not compelled to become such a member unless he is so compelled pursuant to a condition of his appointment under section 30 or 31 but, if he is such a member, he may only be a member of one such scheme and he shall not be a member of the Western Australian Post-Secondary Education Superannuation Scheme established under section 36 of the Colleges Act as incorporated by section 34 as in force before the coming into operation of section 13 of the *Acts Amendment (Educational Institutions Superannuation) Act 1985*<sup>1</sup> or a contributor for pension, superannuation or benefits under the *Superannuation and Family Benefits Act 1938*<sup>5</sup>.

*[Section 34 inserted by No. 77 of 1985 s. 13; amended by No. 63 of 1990 s. 19.]*

**35. Staff associations**

- (1) For the purposes of this Act there may be established and maintained in the University —
- (a) an organized association of academic staff; and
  - (b) an organized association of other salaried staff,

and those associations shall be the recognised means of communication between academic staff, and other salaried staff, respectively, and the Council, but for those purposes there shall not be at the same time more than one such association of academic staff, and one such association of other salaried staff.

- (2) The primary function of an association maintained under subsection (1) shall be to further the common interests of its members.

*[Section 35 amended by No. 63 of 1990 s. 19.]*

## **Part VIII — Financial provisions**

### **36. Funds of the University**

- (1) The funds available to the Council for the purpose of enabling it to exercise its powers, authorities, duties and functions under this Act are —
  - (a) moneys from time to time appropriated by Parliament for that purpose; and
  - (b) moneys received by the University by way of fees, charges, gifts, bequests or otherwise whether paid or made to the University or the Council; and
  - (ca) moneys received by the Council or the University, where the moneys are derived from something that the University is authorised to do by an approval granted under section 30I; and
  - (c) moneys borrowed by the University for the purposes of this Act; and
  - (d) moneys made available to the Council or the University for the purposes of this Act.
- (2) An account called the Edith Cowan University Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) at a bank as defined in section 3 of that Act,to which the moneys referred to in subsection (1) are to be credited.
- (3) The Council shall apply the funds standing to the credit of the Edith Cowan University Account pursuant to and only for the purposes of this Act.

*[Section 36 amended by No. 63 of 1990 s. 19; No. 49 of 1996 s. 53; No. 77 of 2006 s. 17; No. 32 of 2016 s. 75.]*

**37. Borrowing and other ways of raising money**

- (1) In this section —  
*debt paper* means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.
- (2) The University may do all or any of the following —
- (a) borrow money;
  - (b) obtain credit;
  - (c) issue, acquire, hold or dispose of debt paper;
  - (d) create and issue capital instruments;
  - (e) arrange for financial accommodation to be extended to the University.
- (3) Capital instruments created and issued by the University under subsection (2)(d) —
- (a) may be described in any way determined by the University; and
  - (b) are to be created and issued on whatever terms the University determines.
- (4) The University must keep whatever registers for the purposes of this section as are prescribed by regulations made under this Act.
- (5) Nothing in this section or section 37A or 37B affects or applies to moneys that are applied under section 38A(b).

*[Section 37 inserted by No. 32 of 2016 s. 76.]*

**37A. Notice of borrowing**

- (1) If the University intends to borrow money and seek a guarantee under section 37B in respect of that borrowing, the University must —

**s. 37B**

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- (a) give the Minister reasonable advance notice of its intention to borrow that money and to seek a guarantee; and
  - (b) notify the Minister of the outcome of the University's application to borrow that money.
- (2) A liability of the University is not unenforceable or in any way affected by the University's failure to comply with subsection (1).

*[Section 37A inserted by No. 32 of 2016 s. 76.]*

**37B. Guarantees**

- (1) The Treasurer, on the Minister's recommendation, may guarantee the performance by the University in the State or elsewhere, of any financial obligation of the University.
- (2) A guarantee —
- (a) is given in the name and on behalf of the State; and
  - (b) must be in the form, and contain the terms and conditions, that the Treasurer determines; and
  - (c) without limiting paragraph (b), must be subject to the condition that the person for whose benefit the guarantee is given must not, without the consent in writing of the Treasurer, assign or encumber the benefit of the guarantee.
- (3) Before a guarantee is given, the University must —
- (a) give the Treasurer any security that the Treasurer requires; and
  - (b) execute all instruments that are required for that purpose.
- (4) Payments made by the Treasurer under a guarantee are to be charged to the Consolidated Account, and this subsection appropriates that Account accordingly.



- (5) The Treasurer must cause to be credited to the Consolidated Account any amounts received or recovered from the University or otherwise in respect of any payment made by the Treasurer under a guarantee.

*[Section 37B inserted by No. 32 of 2016 s. 76.]*

**37C. Charges for guarantee**

- (1) The Treasurer may, from time to time, after consultation with the University, fix charges to be paid by the University in respect of a guarantee under section 37B.
- (2) Payments by the University in respect of charges fixed under subsection (1) —
- (a) must be made at the times, and in the instalments, that the Treasurer determines and notifies to the University; and
  - (b) must be credited to the Consolidated Account.

*[Section 37C inserted by No. 32 of 2016 s. 76.]*

**38. Powers of Council to invest**

Subject to section 38A in relation to moneys held on trust by the University for the purposes of the University, the Council —

- (a) may invest any moneys standing to the credit of the Edith Cowan University Account that are not immediately required for the purposes of this Act in any securities that the Council thinks fit; and
- (b) may sell and realise any security or reinvest the proceeds of any sale.

*[Section 38 inserted by No. 70 of 2003 s. 26.]*

**s. 38A**

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**38A. Trust property and trust moneys**

The Council —

- (a) may act as trustee or manager of any property or moneys held on trust by the University for the purposes of the University; and
- (b) may apply any property or moneys so held, and not immediately required for the purposes of the trust declared in relation to the property or moneys, in any way that is not inconsistent with the instrument creating the trust.

*[Section 38A inserted by No. 70 of 2003 s. 26.]*

**38B. Repayment of trust moneys**

- (1) The amount of any moneys that are applied under section 38A(b) —
  - (a) is taken to be a loan to the University from the trust estate or trust fund from which the amount is taken; and
  - (b) subject to subsection (2), is repayable by the Council as approved by the Minister with interest at the rate approved by the Minister from time to time.
- (2) An amount that is repayable under subsection (1)(b) (including interest on the amount) is to be repaid by the Council within 25 years.
- (3) Sections 37, 37A and 37B do not apply to or affect moneys that are applied under section 38A(b).

*[Section 38B inserted by No. 70 of 2003 s. 26; amended by No. 32 of 2016 s. 77.]*

**39. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) Subject to subsection (3), the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of

statutory authorities apply to and in respect of the University and its operations.

- (2) Notwithstanding the *Financial Management Act 2006* the financial year of the University shall end on 31 December.
- (3) Notwithstanding the provisions of the *Financial Management Act 2006* —
  - (a) sections 13, 14 and 40 do not have effect in relation to the University; and
  - (b) section 78(1) of that Act has effect in relation to the University as if it had been enacted in the following form —

“

- (1) The Treasurer may issue, amend or revoke instructions concerning —
  - (a) the annual report required to be prepared under Part 5; and
  - (b) the establishment and keeping of the accounts of statutory authorities, including the accounts of subsidiary bodies and related bodies; and
  - (c) the form and content of financial statements and reports on the operations of statutory authorities and their subsidiary bodies and related bodies, including information to be disclosed in respect of affiliated bodies; and
  - (d) the preparation of key performance indicators of statutory authorities and their subsidiary bodies and related bodies.

”.

*[Section 39 inserted by No. 32 of 1991 s. 3; amended by No. 77 of 2006 s. 17.]*

**[40.]** *Deleted by No. 98 of 1985 s. 3.]*

## **Part IX — Student Guild**

### **41. Establishment of Student Guild**

- (1) On and after the day on which the *Western Australian College of Advanced Education Amendment Act 1990* comes into operation<sup>1</sup> (in this section referred to as ***the commencement day***) the body corporate that was continued in existence under this Act as though it were established under this Act by the name of the “Western Australian College of Advanced Education Student Guild” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act to be called the “Edith Cowan University Student Guild” but so that the corporate identity of the body corporate and its rights and obligations are not affected by the change in name.
- (1a) A reference to the Western Australian College of Advanced Education Student Guild, whether by use of that name or a similar or abbreviated form of that name —
- (a) in a written law passed or made before the commencement day;
  - (b) in any document or other instrument made, executed, entered into or done before the commencement day; or
  - (c) made before the commencement day in any other manner,

shall be construed as if it had been amended to be a reference to the Edith Cowan University Student Guild, unless because of the context it would be inappropriate to construe the reference in that manner.

- (2) The Student Guild under its corporate name —
- (a) has perpetual succession;
  - (b) shall have a common seal;
  - (c) may sue and be sued in any court; and

- (d) subject to the Statutes, may do and suffer all other acts and things that bodies corporate may by law do and suffer.
- (3) The Student Guild shall be an organized association of enrolled students the primary function of which is to further the common interests of its members.
- (4) The Student Guild shall be the recognised means of communication between its members and the Council in accordance with any Statutes that the Council makes.
- (5) Subject to the conditions and qualifications for membership prescribed by Statute any enrolled student is eligible to be a member of the Student Guild.
- (6) A student becomes a member of the Student Guild upon enrolment, for the period of enrolment, unless —
  - (a) at the time of enrolment that student elects not to become a member; or
  - (b) the enrolled student is not eligible to be a member.
- (6a) Despite subsection (6), an enrolled student may resign at any time as a member of the Student Guild.
- (6b) No academic benefit, right or privilege shall be denied to or withheld from any enrolled student by reason of that student being or not being a member of the Student Guild.
- (7) An enrolled student (whether a member of the Student Guild or not) may vote in an election held to fill a vacancy in a Student Guild office, but an enrolled student cannot hold an elective office unless that enrolled student is a member of the Student Guild.
- [(8) deleted]*
- (9) The Statutes may prescribe —
  - (a) the classes of membership and the conditions of or qualifications for membership of the Student Guild;

**s. 41A**

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- (b) the powers, duties and functions of the Student Guild;  
and
- (c) such other matters and things as are necessary or convenient for the effective exercise of the powers, duties and functions of the Student Guild.

*[Section 41 amended by No. 63 of 1990 s. 18 and 19; No. 91 of 1994 s. 10; No. 44 of 2002 s. 7; No. 32 of 2016 s. 78.]*

**41A. Amenities and services fee**

- (1) A Statute made under section 26 may provide for an annual amenities and services fee to be payable by enrolled students, and (without limitation) for that purpose may —
  - (a) prescribe the procedures to be followed in setting that fee;
  - (b) prescribe the persons by whom the fee is payable, and exempt or provide for the exemption of persons or classes of persons from payment of the fee;
  - (c) provide for different levels of the fee to be payable by different classes of persons;
  - (d) provide for the reduction, waiver or refund, in whole or in part, of the fee;
  - (e) prescribe terms and conditions on which any amount of the total fees collected is to be paid to the Student Guild, including conditions to be met before some or all of the amount may be paid to the Student Guild;
  - (f) provide for the Council to decide how the amount of the total fees collected (after deducting the amount that is paid to the Student Guild) is to be spent, after consultation by the Council with the Student Guild.
- (2) This section does not limit section 26.
- (3) The Council must pay to the Student Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

- (4) This section overrides section 36(1)(b) and (3).

*[Section 41A inserted by No. 32 of 2016 s. 79.]*

**41B. Council to include detail in Statute**

- (1) The Council shall specify, by Statute, the broad categories of amenities and services within which the fees collected may be expended.
- (2) The fees collected each year are to be allocated to broad categories of expenditure and the Council must specify, by Statute —
- (a) the broad categories of amenities and services within which the fees are to be expended; and
  - (b) the process for determining those categories.
- (3) The Council shall prescribe, by Statute, the measures by which the Student Guild is to account for any fees received, and those measures shall include —
- (a) a requirement that the annual financial statements of the Student Guild are to be audited by an independent external auditor whose appointment requires Council approval; and
  - (b) a requirement for the Student Guild to provide a copy of each audited balance sheet, and an annual statement of the Student Guild's income and expenditure, to the Council.

*[Section 41B inserted by No. 44 of 2002 s. 8; amended by No. 32 of 2016 s. 80.]*

## Part X — Miscellaneous

### 42. Governor to be Visitor

- (1) The Governor is the Visitor of the University, and has the functions that Visitors usually have.
- (2) In this section, the expression **Governor** means the Governor of the State and not the Governor acting with the advice and consent of the Executive Council.

*[Section 42 amended by No. 63 of 1990 s. 19; No. 32 of 2016 s. 81.]*

### 43. Exemption from rate or tax

- (1) No rate may be charged or levied on any property vested in the University.
- (2) Subsection (1) does not operate so as to exempt property that is vested in the University if it is leased to or ordinarily occupied by any other person —
  - (a) for any private purpose; or
  - (b) for a commercial purpose (as defined in section 30A(1)) under an approval given under section 30I.
- (3) The *Land Tax Assessment Act 2002* section 33 provides an exemption from land tax in respect of land owned by, vested in or held in trust for the University, in the circumstances set out in that section.

*[Section 43 inserted by No. 32 of 2016 s. 82.]*

### 44A. Regulations

- (1) The Governor, on the recommendation of the Minister, may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.



- (2) Before making a recommendation under subsection (1), the Minister must consult with the Council.

*[Section 44A inserted by No. 32 of 2016 s. 82.]*

**[44.]** *Deleted by No. 32 of 2016 s. 82.]*

## **Part XI — Transitional and savings**

### **Division 1 — General**

*[Heading inserted by No. 32 of 2016 s. 83.]*

*[45, 46. Deleted by No. 32 of 2016 s. 84.]*

#### **47. Continuation of Statutes, by-laws and rules**

- (1) On and after the commencement date any Statute or by-law pertaining to the College, or to the lands of the College, that was in force under the Colleges Act immediately before that date shall, subject to this Act and in so far as it is not inconsistent with this Act, continue in force and be deemed to be a Statute or by-law, as the case may be, made by the Council of the University pursuant to this Act.
- (2) On and after the commencement date any rule of the College that was in force immediately before that date shall, subject to this Act and in so far as it is not inconsistent with this Act, continue in force and be deemed to be a rule made by the Council pursuant to this Act.
- (3) In any Statute, by-law or rule continued in force by subsection (1) or (2) —
  - (a) any reference to the Colleges Act shall be read and construed as a reference to this Act;
  - (b) any reference to the College by its corporate name under the Colleges Act shall be read and construed as a reference to the University by its corporate name under this Act.
- (4) Until a proclamation is made under section 29(2), by-laws that are continued in force by subsection (1) shall apply to all land vested in or in the management and control of the University.

*[Section 47 amended by No. 63 of 1990 s. 19.]*

**48. Staff**

All persons who were, immediately before the commencement date, members of the staff of the College, shall continue to be members of the staff of the University under this Act and all such persons shall retain their existing and accruing rights including their rights in relation to sick leave, long service leave, retirement and pension fund benefits and any service regarded as “service” with the College under the Colleges Act shall be regarded as “service” with the University under this Act.

*[Section 48 amended by No. 63 of 1990 s. 19.]*

**49. Property**

On and from the commencement date all property that was, immediately before that date, held and used for the purposes of the Colleges Act by the College, shall be held and used by the University for the purposes of this Act.

*[Section 49 amended by No. 63 of 1990 s. 19.]*

**50. Superannuation**

The rights and interests of any contributor or pensioner under any superannuation scheme or agreement established or entered into under section 35 or 36 of the Colleges Act shall continue as though the rights and interests of the contributor or pensioner were rights and interests obtained in respect of service under this Act.

**51. Associations continued**

The associations formed for the purposes of sections 43(1)(a) and 43(1)(b) of the Colleges Act are continued as though they were established for the purposes of this Act.

*[52. Deleted by No. 32 of 2016 s. 85.]*

**53. Continuation of rights of students**

The rights and interests in association with enrolment of every student of the University, existing immediately before the commencement date shall, subject to the Statutes and rules of the University, continue as though those rights and interests were rights and interests with respect to the University under this Act.

*[Section 53 amended by No. 63 of 1990 s. 19.]*

**Division 2 — Transitional provisions for *Universities Legislation Amendment Act 2016***

*[Heading inserted by No. 32 of 2016 s. 86.]*

**54. Term used: commencement day**

In this Division —

***commencement day*** means the day on which the *Universities Legislation Amendment Act 2016* section 48 comes into operation.

*[Section 54 inserted by No. 32 of 2016 s. 86.]*

**55. Transitional provisions (Council)**

- (1) This section applies despite the amendments made to section 9, and the replacement of section 10 by the *Universities Legislation Amendment Act 2016* sections 55 and 56.
- (2) Any person who, immediately before commencement day, holds office under section 9 (as in effect immediately before commencement day) as an appointed or nominated or elected member of the Council —
  - (a) continues in office —
    - (i) under and subject to Part III; and
    - (ii) for the balance of the person's term of office remaining immediately before commencement day;

but

- (b) vacates office before then in the circumstances set out in section 11 as that section is in effect immediately before commencement day.
- (3) For the purposes of subsection (2)(a)(ii), any member who holds office under section 9(1)(aa) (as in effect immediately before commencement day) is taken to have a term of office that expires on the 60<sup>th</sup> day after the day on which the *Universities Legislation Amendment Act 2016* section 55 comes into operation.
- (4) If a question arises under this section as to the balance of a person's term of office remaining immediately before commencement day, the question is to be determined by the Minister.

*[Section 55 inserted by No. 32 of 2016 s. 86.]*

**56. Transitional provisions (Deputy Chancellor)**

- (1) The person who, immediately before commencement day, holds office as Pro-Chancellor of the University under section 12 (as in effect immediately before commencement day) continues to hold office as Deputy Chancellor for the balance of their term of office.
- (2) Subsection (3) applies to a reference to the Pro-Chancellor of the University —
  - (a) in any written law passed or made before commencement day; or
  - (b) in any document or other instrument made, executed, entered into or done before commencement day; or
  - (c) made before commencement day in any other manner.
- (3) A reference to the Pro-Chancellor of the University is to be read and construed as a reference to the Deputy Chancellor, unless because of the context it would be incorrect or inappropriate to do so.

*[Section 56 inserted by No. 32 of 2016 s. 86.]*

**57. Transitional provisions (Vice-Chancellor)**

- (1) The person who, immediately before commencement day, holds office as chief executive officer of the University under section 30 (as in effect immediately before commencement day) continues to hold office as Vice-Chancellor.
- (2) Subsection (3) applies to a reference to the chief executive officer of the University —
  - (a) in a written law passed or made before commencement day; or
  - (b) in any document or other instrument made, executed, entered into or done before commencement day; or
  - (c) made before commencement day in any other manner.
- (3) A reference to the chief executive officer of the University is to be read and construed as a reference to the Vice-Chancellor, unless because of the context it would be incorrect or inappropriate to do so.

*[Section 57 inserted by No. 32 of 2016 s. 86.]*

**58. Transitional provisions (Advisory Board of the Academy)**

- (1) In this section —

*Advisory Board of the Academy* means the Advisory Board of the Academy referred to in section 25(1);

*former Board* means the Board of the Academy constituted by a Statute made under section 24(2) (as in effect immediately before commencement day).
- (2) Any person who, immediately before commencement day, holds office as a member of the former Board continues to hold office as member of the Advisory Board of the Academy for the balance of their term of office.

- (3) If a question arises under this section as to the balance of a person's term of office remaining immediately before commencement day, the question is to be determined by the Minister.
- (4) Subsection (5) applies to a reference to the former Board —
  - (a) in any written law passed or made before commencement day; or
  - (b) in any document or other instrument made, executed, entered into or done before commencement day; or
  - (c) made before commencement day in any other manner.
- (5) A reference to the former Board is to be read and construed as a reference to the Advisory Board of the Academy, unless because of the context it would be incorrect or inappropriate to do so.

*[Section 58 inserted by No. 32 of 2016 s. 86.]*

**59. Transitional provisions (Statutes)**

- (1) In this section —

**former section 27** means section 27 as in effect immediately before it was deleted by the *Universities Legislation Amendment Act 2016* section 68.
- (2) Section 27(2) does not apply to or in relation to any Statute made and published in the *Gazette* before commencement day, and former section 27(2) and (3) apply instead as if the former section 27 had not been deleted.
- (3) If a Statute has been made but not published in the *Gazette* before commencement day —
  - (a) section 27(2) does not apply to and in relation to that Statute; and
  - (b) former section 27(2) and (3) apply instead as if the former section 27 had not been deleted.

*[Section 59 inserted by No. 32 of 2016 s. 86.]*

**60. Transitional provisions (guarantees)**

A guarantee given under section 37 (as in effect immediately before commencement day) and in force immediately before commencement day continues as if it had been given under section 37B.

*[Section 60 inserted by No. 32 of 2016 s. 86.]*

**61. Transitional provisions (amenities and services fee)**

(1) In this section —

**former section 41A** means section 41A as in effect immediately before it was deleted by the *Universities Legislation Amendment Act 2016* section 79;

**transition period** means the remainder of the calendar year beginning on commencement day.

(2) During the transition period —

- (a) section 41A does not apply to the annual amenities and services fee set under former section 41A; and
- (b) former section 41A applies instead to that annual amenities and services fee as if former section 41A had not been deleted.

*[Section 61 inserted by No. 32 of 2016 s. 86.]*



## **Schedule 1 — Council members**

[s. 10A, 11A, 13]

*[Heading inserted by No. 8 of 2005 s. 23.]*

### **Division 1 — Duties**

*[Heading inserted by No. 8 of 2005 s. 23.]*

#### **1. Duties**

- (1) Each member —
- (a) must at all times act honestly in the performance of the functions of a member, whether within or outside the State;
  - (b) must at all times exercise the degree of care and diligence in the performance of the functions of a member, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Council's circumstances;
  - (c) must at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member;
  - (d) must not, whether within or outside the State, make improper use of information acquired by virtue of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;
  - (e) must not, whether within or outside the State, make improper use of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.
- (2) Nothing in subclause (1) or section 11A or 13 affects —
- (a) any other duty a member may have under any other law; or
  - (b) the operation of any other law in relation to such a duty.

*[Clause 1 inserted by No. 8 of 2005 s. 23.]*

**Division 2 — Disclosure of interests**

*[Heading inserted by No. 8 of 2005 s. 23.]*

**2. Disclosure of interests**

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest at a meeting of the Council.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

*[Clause 2 inserted by No. 8 of 2005 s. 23.]*

**3. Voting by interested members**

A member who has a material personal interest in a matter that is being considered by the Council —

- (a) must not vote whether at a meeting or otherwise —
  - (i) on the matter; or
  - (ii) on a proposed resolution under clause 4 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),is being considered at a meeting.

*[Clause 3 inserted by No. 8 of 2005 s. 23.]*

**4. Clause 3 may be declared inapplicable**

Clause 3 does not apply if the Council has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and

- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

*[Clause 4 inserted by No. 8 of 2005 s. 23.]*

*[5. Deleted by No. 32 of 2016 s. 87.]*

**6. Minister may declare clause 3 inapplicable**

- (1) The Minister may, on the application of a member, by writing declare that clause 3 does not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament within 14 sitting days of that House after the declaration is made.

*[Clause 6 inserted by No. 8 of 2005 s. 23; amended by No. 32 of 2016 s. 88.]*

### Notes

- <sup>1</sup> This is a compilation of the *Edith Cowan University Act 1984* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Western Australian College of Advanced Education Act 1984</i> <sup>7</sup>	18 of 1984	31 May 1984	1 Sep 1984 (see s. 2 and <i>Gazette</i> 24 Aug 1984 p. 2567)
<i>Acts Amendment (Educational Institutions Superannuation) Act 1985 Pt. III</i> <sup>8</sup>	77 of 1985 (as amended by No. 63 of 1990 s. 22)	20 Nov 1985	16 Dec 1985 (see s. 2 and <i>Gazette</i> 13 Dec 1985 p. 4758)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment and Repeal (Post-Secondary Education) Act 1989 Pt. 8</i>	48 of 1989	9 Jan 1990	1 Jan 1990 (see s. 2)
<i>Western Australian College of Advanced Education Amendment Act 1990</i>	63 of 1990	17 Dec 1990	1 Jan 1991 (see s. 2)
<b>Reprint of the <i>Edith Cowan University Act 1984</i> as at 16 May 1991 (includes amendments listed above)</b>			
<i>Acts Amendment (Financial Administration and Audit) Act 1991 Pt. 3</i>	32 of 1991	4 Dec 1991	1 Jan 1992
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Voluntary Membership of Student Guilds and Associations Act 1994 Pt. 4</i>	91 of 1994	5 Jan 1995	5 Jan 1995 (see s. 2)
<i>Industrial Legislation Amendment Act 1995 s. 35</i>	1 of 1995	9 May 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 24 Nov 1995 p. 5389)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 25	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Education Amendment Act 1996</i> s. 16(4)	22 of 1996	11 Jul 1996	11 Jul 1996 (see s. 2(1))
<i>Financial Legislation Amendment Act 1996</i> s. 53 and 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 22	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 30 <sup>9</sup>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<b>Reprint of the Edith Cowan University Act 1984 as at 1 Oct 1999</b> (includes amendments listed above)			
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Acts Amendment (Student Guilds and Associations) Act 2002</i> Pt. 3	44 of 2002	3 Jan 2003	25 Jan 2003 (see s. 2 and <i>Gazette</i> 24 Jan 2003 p. 141)
<i>Acts Amendment and Repeal (Competition Policy) Act 2003</i> Pt. 7	70 of 2003	15 Dec 2003	21 Apr 2004 (see s. 2 and <i>Gazette</i> 20 Apr 2004 p. 1297)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 46 <sup>10</sup>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<b>Reprint 3: The Edith Cowan University Act 1984 as at 20 Aug 2004</b> (includes amendments listed above)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Universities Legislation Amendment Act 2005</i> Pt. 3 <sup>11</sup>	8 of 2005	7 Jul 2005	13 Aug 2005 (see s. 2 and <i>Gazette</i> 12 Aug 2005 p. 3651)
<b>Reprint 4: The Edith Cowan University Act 1984 as at 11 Aug 2006</b> (includes amendments listed above)			

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and 17</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Acts Amendment (Bankruptcy) Act 2009 s. 33</i>	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010 s. 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Universities Legislation Amendment Act 2016 Pt. 3</i> <del>(other than s. 61)<sup>3</sup></del>	32 of 2016	19 Oct 2016	<a href="#">Pt. 3 (other than s. 61):</a> 2 Jan 2017 (see s. 2(b) and <i>Gazette</i> 9 Dec 2016 p. 5557); <a href="#">s. 61: 1 Oct 2017 (see s. 2(b) and <i>Gazette</i> 9 Dec 2016 p. 5557)</a>

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### **Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 40<sup>12</sup></i>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<del><i>Universities Legislation Amendment Act 2016 s. 61<sup>13</sup></i></del>	<del>32 of 2016</del>	<del>19 Oct 2016</del>	<del>1 Oct 2017 (see s. 2(b) and <i>Gazette</i> 9 Dec 2016 p. 5557)</del>

<sup>2</sup> Repealed by the *School Education Act 1999*.

<sup>3</sup> Under the *Teacher Education Act 1972* s. 57, the appointed day was 26 November 1973. See *Gazette* 23 November 1973 p. 4266. The Act was repealed by the *Colleges Act 1978* s. 5.

<sup>4</sup> Repealed by the *Vocational Education and Training Act 1996*.

<sup>5</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and*

*Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section.

<sup>6</sup> Repealed by the *State Superannuation Act 2000* (see also endnote 12).

<sup>7</sup> Now known as the *Edith Cowan University Act 1984*; short title changed (see note under s. 1).

<sup>8</sup> The *Acts Amendment (Educational Institutions Superannuation) Act 1985* s. 14 and 15 read as follows:

“

**14. Rights of contributors to The Superannuation Fund and the Western Australian Post Secondary Education Superannuation Scheme**

- (1) Notwithstanding section 13, where a member of the staff of the University was, immediately before the coming into operation of that section —
- (a) a contributor for pension, superannuation or benefits under an agreement entered into by the Council under section 35 of the *Colleges Act* as incorporated by section 34 of the principal Act as in force before the coming into operation of section 13, he shall be entitled to continue to be such a contributor and to retain his accrued rights under the *Superannuation and Family Benefits Act 1938*; or
  - (b) a member of the Western Australian Post Secondary Education Superannuation Scheme established under section 36 of the *Colleges Act* as incorporated by section 34 of the principal Act as in force before the coming into operation of section 13, he shall be entitled to continue to be such a member and to retain his accrued rights under that superannuation scheme.

**15. Rights and liabilities of the Council not affected**

Nothing in section 13 affects any rights or liabilities of the Council under an agreement entered into by the Council under section 35 of the *Colleges Act* as incorporated by section 34 of the principal Act as in force before the coming into operation of section 13.

”

<sup>9</sup> The *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 30(2) reads as follows:

“

- (2) Despite subsection (1)(a), each person appointed and holding office as a member of the Council of the University under section 9(1)(a) of the Act immediately before the commencement of this section continues, subject to the Act, to hold office as a member for the remainder of the period for which he or she was appointed.

”.

<sup>10</sup> The *Statutes (Repeals and Minor Amendments) Act 2003* s. 46(5) reads as follows:

“

- (5) A person holding office as the chairperson or a member of the Bunbury Campus Advisory Board immediately before the commencement day continues to hold office on and after that day, subject to the Statute of the University under which the person was appointed, as the chairperson or a member of the ECU South West Campus (Bunbury) Advisory Board, as the case requires, for the remainder of the period for which he or she was appointed to the Bunbury Campus Advisory Board.

”.

<sup>11</sup> The *Universities Legislation Amendment Act 2005* s. 16 reads as follows:

“

**16. Transitional provision**

- (1) In this section —

**commencement day** means the day on which the *Universities Legislation Amendment Act 2005* comes into operation;

**deleted section 9(1)(g) or (h)** means the *Edith Cowan University Act 1984* section 9(1)(g) or (h) as those provisions were in effect immediately before commencement day;

**member** means a member of the Council of the Edith Cowan University.

- (2) The persons who, immediately before commencement day, were members under deleted section 9(1)(g) or (h) cease to be members on commencement day.

”.



<sup>12</sup> On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 40 had not come into operation. It reads as follows:

“

**40. Edith Cowan University Act 1984 amended**

The *Edith Cowan University Act 1984* is amended as follows:

- (a) in section 32(1) by deleting “, retirement and his rights if any under the *Superannuation and Family Benefits Act 1938*.” and inserting instead —  
“ and retirement. ”;
- (b) by repealing section 32(2);
- (c) in section 34(3) by deleting “contributor for pension, superannuation or benefits under the *Superannuation and Family Benefits Act 1938*.” and inserting instead —

“

Member of a superannuation scheme continued by section 29(c) or (d) of the *State Superannuation Act 2000*.

”

”

<sup>13</sup> ~~On the date as at which this compilation was prepared, the *Universities Legislation Amendment Act 2016* s. 61 had not come into operation. It reads as follows:~~

~~**61. Section 15A inserted**~~

~~After section 14 insert:~~

~~**15A. Remuneration and allowances for Council members**~~

- ~~(1) A member of the Council is entitled to be paid the remuneration (if any) and allowances (if any) determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.~~
- ~~(2) Any remuneration and allowances payable are to be paid out of the funds available to the Council under section 36.~~