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1984 as at 16 May 1991.

WESTERN AUSTRALIA

EDITH COWAN UNIVERSITY ACT 1984

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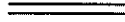
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Reprinted under the *Reprints
Act 1984* as at 16 May 1991.

WESTERN AUSTRALIA



EDITH COWAN UNIVERSITY ACT 1984

**AN ACT to establish and incorporate the Edith Cowan University
and for incidental and other purposes.**

[Long title inserted by No. 63 of 1990 s.4.]

PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Edith Cowan University Act 1984*¹.

[Section 1 amended by No. 63 of 1990 s.19.]

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

3. (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;

"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* as in force immediately before the appointed day as defined in section 4 of the *Teacher Education Act 1972*;

"Board of the Academy" means the Board of Management of the Academy;

"Chancellor" means the Chancellor of the University;

"chief executive officer" means the person holding or acting in the office of chief executive officer of the University under section 30;

"Colleges Act" means the *Colleges Act 1978*;

"commencement date" means the date on which this Act comes into operation¹;

"Council" means the Council 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 authorized to conduct examinations for the University;

"member" means a member of the Council;

"member of the staff" means the chief executive officer, 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 by-law or rule made under a Statute;

"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 the Edith Cowan University referred to in this Act.

(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

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- (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 ss.5 and 19.]

PART II — THE EDITH COWAN UNIVERSITY

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

Establishment

4. (1) On and after the day on which the *Western Australian College of Advanced Education Amendment Act 1990*¹ comes into operation (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 the "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;

- (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, 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.]

Constitution and powers

5. (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;
- (b) shall have a common seal;
- (c) may sue and be sued in any court;
- (d) may take, purchase and hold real and personal property, including property devised, bequeathed or given to the University,
- (e) may grant, sell, alienate, assign and demise real and personal property devised, bequeathed or given to the University as it thinks fit subject only to the express trusts of any deed, will, or instrument under which the property was acquired;

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- (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 Governor;
- (f) may do and suffer all other acts and things that bodies corporate may by law do and suffer.

[(3) repealed]

[Section 5 amended by No. 63 of 1990 ss.7 and 19.]

Common seal

6. (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 authorized 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.]

Functions of the University

7. The functions of the University shall include the following —

- (a) to provide, on a full time or part time basis, courses of study appropriate to a university to meet the needs of the community in this State;
- (b) to encourage and provide facilities for the development and improvement of tertiary education;

- (c) to support and pursue research and scholarship and aid the advancement, development, and practical applications to education, industry, commerce and the community, of knowledge or any techniques;
- (d) to provide such courses of study as may be approved by the Council;
- (e) to foster the general welfare and development of all enrolled students;
- (f) 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 throughout the State; and
- (g) to provide such facilities relating to its functions as the Council thinks necessary or conducive to their attainment.

[Section 7 amended by No. 63 of 1990 ss.8 and 19.]

PART III — THE COUNCIL OF THE UNIVERSITY

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

The Council

8. The governing authority of the University is the Council.

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

Constitution of the Council

9. (1) Subject to this Act the Council shall consist of —
- (a) 7 persons appointed by the Governor being persons with experience in education, the professions, industry or commerce and such other persons who are representative of the community;
 - (aa) the person for the time being holding the office of chief executive officer of the department of the Public Service principally assisting the Minister charged with the administration of the *Education Act 1928* in administering that Act or a person nominated in writing to the Minister by the chief executive officer of that department;
 - (b) the person for the time being holding office as the chief executive officer of the University;
 - (c) 2 persons who are members of the full time academic staff of the University who are elected by members of that staff in such manner as is prescribed by Statute;
 - (d) 1 person who is a member of the full time salaried staff, other than academic staff, of the University, and who is elected by members of that staff in such manner as is prescribed by Statute;
 - (e) 2 persons who are enrolled students of the University, and who are elected by the enrolled students of the University, in such manner as is prescribed by Statute;
 - (f) 1 person who is elected by and from among the persons whose names are registered on the Register of Alumni maintained by the University;

- (g) the person for the time being holding the office of chairperson of the Bunbury Campus Advisory Board constituted under section 20;
- (h) the person for the time being holding the office of chairperson of the Board of the Academy;
- (i) 3 persons appointed from time to time by co-option by the Council; and
- (j) if he is not already a member pursuant to one of the foregoing paragraphs of this subsection, the Chancellor.

(2) Proceedings of the first meeting of the Council after the commencement date are not invalid by reason only that a recommendation for or an appointment to an office referred to in subsection (1)(i) has not been made.

(3) A person whose whole or principal employment is that of a member of the staff of the University is not eligible to hold office by virtue of subsection (1)(a), (e), (f) or (i).

[Section 9 amended by No. 63 of 1990 ss.9 and 19.]

Term of office

10. (1) Subject to this Act —

- (a) an appointed member holds office for such period not exceeding 3 years as is specified in the instrument of his appointment;
- (b) an elected member, other than a member referred to in section 9(1)(e) holds office for a term of 3 years from the date on which his election takes effect;

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- (c) a member referred to in section 9(1)(e) holds office for a term of one year from the date on which his election takes effect; and
- (d) a person holding office as a member pursuant to section 9(1)(j) shall hold that office for the term of his office as Chancellor.

(2) Subject to subsections (3) and (4) all retiring members are, unless otherwise disqualified, eligible for re-appointment or re-election.

(3) A member referred to in section 9(1)(e) is not eligible for re-election more than once.

(4) A member other than a member referred to in section 9(1)(e) is not eligible to be reappointed on the expiry of a third successive term of office until 12 months have elapsed after such expiry.

(5) Where a vacancy occurs in the office of an elected member —

- (a) if, at the expiration of 3 months from the occurrence of the vacancy, the office has not been filled by election, it may be filled by a person who has been appointed by the Governor and has the like prescribed qualification as that of the member whose office has become vacant; and
- (b) if the vacancy occurs otherwise than by effluxion of time, the person who fills the vacancy shall, subject to this Act, hold office as member for the residue of his predecessor's term of office.

(6) In this section —

"appointed member" means a member referred to in section 9(1)(a) or 9(1)(i);

"elected member" means a member referred to in section 9(1)(c), 9(1)(d), 9(1)(e) or 9(1)(f).

[Section 10 amended by No. 63 of 1990 s.19.]

Vacation of office

11. The office of a member becomes vacant if —

- (a) his term of office expires by effluxion of time;
- (b) he resigns his office by writing under his hand addressed to the Minister;
- (c) he becomes permanently incapable of performing his duties as a member;
- (d) he is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (e) he is convicted of an indictable offence;
- (f) he is absent without leave of the Council from 3 consecutive meetings of the Council; or
- (g) he ceases to hold any qualification required for his becoming or being a member.

Chancellor and meetings of Council

12. (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 Pro-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 Pro-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 Pro-Chancellor of the University shall preside at the meeting;

(b) the Chancellor and the Pro-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 Pro-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 4 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.]

Vote by member having a pecuniary interest

13. A member is not entitled to vote either in the Council or in any committee thereof on any question in respect of which he has a direct pecuniary interest, and if the member so votes his vote shall be disregarded.

Quorum

14. (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.

Delegation by Council

15. (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 this power of delegation and 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 and no delegation so given prevents the exercise or discharge by the Council of any of its powers, authorities, duties or functions.

(3) Each committee appointed by the Council pursuant to this section shall report to the Council on its activities at such times as the Council directs.

[Section 15 amended by No. 63 of 1990 s.19.]

PART IV — FUNCTIONS, DUTIES AND POWERS
OF THE COUNCIL

Functions and duties of the Council

16. (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) repealed]

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

Powers of Council

17. (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 authorized by this Act to provide;

- (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;
- (c) may provide courses of study appropriate to a university on a full time or part time basis at such place or places as are determined by the Council and may with the approval of the Minister declare that any such place or places constitute a campus of the University;
- (d) may establish guidelines for the use of University facilities by the community and levy and collect appropriate charges for such use;
- (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
- (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 ss.11 and 19.]

Academic Board

18. (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.]

Bunbury Campus of the University

19. (1) On and after the coming into operation of the *Western Australian College of Advanced Education Amendment Act 1990*¹ (in this section referred to as "the commencement day") the branch of the University continued under this Act under the name "Bunbury Institute of Advanced Education" is constituted as a campus of the University and shall be known as the Bunbury Campus of the University.

(2) A reference to the Bunbury Institute 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;
- (b) in any document or other instrument made, executed, entered into or done before that 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 Bunbury Campus of the University, unless because of the context it would be inappropriate to construe the reference in that manner.

[Section 19 inserted by No. 63 of 1990 s.12.]

Bunbury Campus Advisory Board

20. (1) There shall be a Bunbury Campus Advisory Board.

(2) The constitution of the Bunbury Campus Advisory Board, the number of persons who shall comprise the Bunbury Campus Advisory 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 Bunbury Campus Advisory Board may be prescribed by Statute.

(3) Subject to subsection (4), the Bunbury Campus Advisory Board shall be responsible to the Council for the control and management of —

- (a) the affairs and concerns of the Bunbury Campus; and
- (b) the property of the University held at, or for the purposes of, the Bunbury Campus.

(4) The Bunbury Campus Advisory Board is subject to the direction and control of the Council.

[Section 20 inserted by No. 63 of 1990 s.12.]

[21., 22., 23. Sections 21, 22 and 23 repealed by No. 63 of 1990 s.12.]

Western Australian Academy of Performing Arts

24. (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 and without limiting the generality of the foregoing may make Statutes —

- (a) constituting the Board of the Academy;
- (b) prescribing the terms of office of the members of the Board of the Academy;
- (c) prescribing the circumstances in which an office of member of the Board of the Academy becomes vacant;
- (d) providing for meetings of the Board of the Academy;
- (e) prescribing the powers and duties of the Board of the Academy; and
- (f) prescribing all matters that are necessary or convenient to be prescribed for the purposes of giving effect to this section.

(3) The Board of the Academy is subject to the direction and control of the Council.

[Section 24 amended by No. 63 of 1990 s.19.]

[25. Section 25 repealed by No. 63 of 1990 s.13.]

PART V — STATUTES

Power to make Statutes

26. (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;
- (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;
- (c) the organization and supervision of the teaching of enrolled students;
- (d) the academic and other staff, officers and employees of the University;
- (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;

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- (f) the entrance standards for students;
- (g) the granting of appropriate degrees, diplomas and certificates or honorary awards by the Council;
- (h) the granting of scholarships, exhibitions, bursaries and prizes;
- (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;
- (j) the admission of graduates and students of other educational institutions to any corresponding status in the University without examination;
- (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;
- (l) the establishment by the Council of hostels and halls of residence for enrolled students and the management, control and closing of any of those hostels and halls;
- (m) the government of hostels and halls of residence that are under the control of the Council and the affiliation of hostels and halls of residence that are not under the control of the Council;
- (n) the control and investment of the property of the University; and

[(o) deleted]

- (p) any matter authorized 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;
- (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 \$250;
- (c) prescribe circumstances under which a penalty may be modified or suspended;
- (d) provide, in addition to penalties, for restitution to the University not exceeding \$500 for loss, damage or destruction of university property arising out of the commission of a disciplinary offence;
- (e) prescribe rights of appeal against decisions made in the exercise or purported exercise of disciplinary powers;
- (f) prescribe the persons, classes of persons and bodies of persons who may —
 - (i) make a complaint of a disciplinary offence;

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- (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;
- (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;
- (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;
- (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 the power of delegation conferred on the chief executive officer by section 30, where a Statute, or a by-law or rule made under a Statute, with respect to the discipline of the University confers on him any disciplinary power or any power to hear and determine appeals from decisions made in the exercise or purported exercise of disciplinary powers or any power to award or fix costs, he may delegate the power to any person, class of persons or body of persons.

(5) A Statute or a by-law or 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.

(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 by-laws or 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 by-laws or rules shall have the same force and effect as a Statute;
- (b) the manner of promulgation of those by-laws or rules; and
- (c) the revocation or amendment of any of those by-laws or rules.

(8) The production of a verified copy of any by-law or rule made under subsection (7) under the common seal of the University is evidence of the making and authenticity of the by-law or rule in all courts and before all persons acting judicially.

[Section 26 amended by No. 63 of 1990 ss.14 and 19.]

Statutes to be approved by the Governor and published

27. (1) Every Statute made by the Council shall be sealed with the common seal of the University and shall be transmitted by the Council for the approval of the Governor, and when so approved —

(a) shall be published in the *Government Gazette*; and

(b) shall take effect from the date it is so published or from a later date to be specified in the Statute.

(2) A copy of each Statute shall be laid before each House of Parliament within 14 sitting days after it is published in the *Government Gazette* if Parliament is then in session, and if not, then within 14 days after the commencement of the next succeeding Session of Parliament.

(3) If either House of Parliament within the next succeeding 14 sitting days after a copy of a Statute has been laid before it as provided in this section, resolves that the Statute be revoked in whole or in part, that Statute or that part is from the date of such resolution of no effect, but without affecting the validity of anything done pursuant to that Statute in the meantime.

(4) The production of a copy of a Statute under the common seal of the University or of a document purporting to be a copy of a Statute and to have been printed by the Government Printer is, in all proceedings, sufficient evidence of the Statute.

[Section 27 amended by No. 63 of 1990 s.19.]

PART VI — UNIVERSITY LANDS

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

Power to vest land in the University

28. (1) On the recommendation of the Minister the Governor, by Order in Council, may transfer to the management and control of the University or may vest in the University any land that is —

- (a) reserved to Her Majesty under the *Land Act 1933* as sites for schools and other buildings for the purposes of education; or
- (b) vested in the Minister by virtue of section 6 of the *Education Act 1928*,

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 management and control of, or vested in, the University pursuant to this Act, is no longer required for the purposes of this Act, the Governor, by Order in Council, may revest it in Her Majesty of Her Former Estate or in the Minister of his former estate, as the case requires, and thereupon it shall be revested accordingly.

(4) The restrictions imposed by section 5(2)(ea) do not apply to the lease of a portion of the University land to an affiliated residential college, affiliated hostel or hall of residence if it is conditional on the leased land being used only as a place for the residence or education and residence of enrolled students and for such other purposes connected therewith or subordinate thereto as are specified in the lease.

[Section 28 amended by No. 63 of 1990 ss.15 and 19.]

By-laws relating to land

29. (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, —

- (a) declare any land vested in, or under the management and control of the University to be University lands;
- (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;
- (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;
- (c) prescribe fees to be charged to all or any persons for admission to or use of such lands;

- (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 member of the Police Force, or any member of the staff of the University;
- (e) regulate the conduct of persons using or being in or upon such lands;
- (f) prohibit any nuisance, or any offensive, indecent, or improper act, conduct, or behaviour on such lands;
- (g) prohibit the use of abusive or insulting language on such lands;
- (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;
- (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;
- (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;
- (k) prescribe the circumstances under which an authorized person may remove a vehicle, or cause it to be removed, from University lands to a specified place, prescribe his further powers in relation thereto, prescribe the scale of charges to be paid to recover the vehicle from that place, and authorize the Council to hold the vehicle until the prescribed charges are paid;

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- (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 he 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;
- (m) authorize any member of the Police Force 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 member of the Police Force or member of the staff;
- (n) require any person using such lands to give his name and address, whenever required so to do by any member of the Police Force, 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) In subsection (3) "authorized person" means any member of the Police Force, the chief executive officer of the University, or any member of the staff of the University authorized by the chief executive officer in respect of the matters referred to in the provision wherein the expression is used.

- (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) Any by-law may impose a penalty not exceeding \$250 for any breach thereof and proceedings for the recovery of such penalty may be taken by any authorized person in his own name; but all pecuniary penalties shall, notwithstanding anything to the contrary contained in the *Fines and Penalties Appropriation Act 1909* or any other Act, be appropriated and paid to the University for its use.

(7) In any proceedings for any contravention of any by-law the allegation in the complaint 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 for which a complaint may be brought, heard, and determined under the disciplinary Statutes, by-laws and rules of the University instead of before a court of summary jurisdiction.

[Section 29 amended by No. 63 of 1990 s.19.]

PART VII — STAFF

Chief executive officer

30. (1) The Council shall appoint and may terminate the appointment of a person to be the chief executive officer of the University.

(2) The chief executive officer shall hold office as such for such period and on such conditions as the Council determines.

(3) The chief executive officer has such powers and duties as are prescribed and, unless otherwise expressly provided therein, the chief executive officer may delegate any of those powers and duties to any person or committee of persons.

[Section 30 amended by No. 63 of 1990 ss.16 and 19.]

Academic and other staff

31. (1) Subject to this Act and any relevant award or agreement in force under the *Industrial Relations Act 1979* —

- (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 Service 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.]

Continuation of existing rights

32. (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* or a member of the staff of a college under the *Colleges Act* 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*.

(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*.

[Section 32 amended by No. 77 of 1985 s.12.]

Act No. 38 of 1945 not to apply

33. The provisions of the *Government Employees (Promotions Appeal Board) Act 1945*³ do not apply to or in relation to a member of the staff of the University.

[Section 33 amended by No. 63 of 1990 s.19.]

Superannuation

34. (1) The Council may —

- (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*¹ or a contributor for pension, superannuation or benefits under the *Superannuation and Family Benefits Act 1938*.

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

Staff associations

35. (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 recognized 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

Funds of the University

36. (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;
- (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;
- (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) The funds referred to in subsection (1) shall be paid into, and be placed to the credit of an account at the Treasury or at a bank approved by the Treasurer to be called "Edith Cowan University Account".

(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.]

Power to borrow money

37. (1) The Council is authorized with the prior approval in writing of the Treasurer to borrow money upon such terms and conditions as the Treasurer approves.

(2) The Treasurer may in the name and on behalf of the Crown in right of the State guarantee the payment of principal moneys and interest thereon in respect of moneys borrowed by the University under this section and any liability of the Crown arising out of the guarantee is payable out of the Consolidated Revenue Fund which to the extent necessary is appropriated accordingly.

(3) A guarantee given under this section shall be in such form and subject to such conditions as the Treasurer determines and without limiting the generality of the foregoing shall be subject to the condition that the lender shall not, without the consent of the Treasurer, assign or encumber the benefit of the guarantee.

[Section 37 amended by No. 63 of 1990 s.19.]

Power of Council to invest

38. With the approval of the Treasurer, the Council may temporarily 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 the manner that moneys in the Public Bank Account may lawfully be invested under the *Financial Administration and Audit Act 1985*.

[Section 38 amended by No. 98 of 1985 s.3; No. 63 of 1990 s.19.]

Application of *Financial Administration and Audit Act 1985*

39. (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the University and its operations.

[(2) repealed]

(3) Notwithstanding the *Financial Administration and Audit Act 1985*, the financial year of the University shall end on 31 December.

[Section 39 inserted by No. 98 of 1985 s.3; amended by No. 63 of 1990 ss.17 and 19.]

[40. Section 40 repealed by No. 98 of 1985 s.3.]

PART IX — STUDENT GUILD

Establishment of Student Guild

41. (1) On and after the day on which the *Western Australian College of Advanced Education Amendment Act 1990*¹ comes into operation (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 primary function of the Student Guild shall be to further the common interests of the enrolled students of the University.

(4) The Student Guild shall be the recognized means of communication between the enrolled students and the Council.

(5) Subject to subsection (6) and to the Statutes all enrolled students of the University shall be members of the Student Guild.

(6) A student who —

- (a) declares by writing addressed to the chief executive officer of the University that he has a conscientious objection to being a member of the Student Guild and notifies the Student Guild accordingly; and
- (b) pays from time to time to the Student Guild or to a fund or body established for a charitable purpose nominated either by the Student Guild, or if the student so elects, by the student himself an amount equivalent to the subscription which would be payable if the student were a member of the Student Guild,

is exempted from membership of the Guild.

(7) Members of the Student Guild shall pay to the Student Guild such subscriptions as are from time to time determined by the Student Guild and approved by the Council.

(8) Different subscriptions payable to the Student Guild may be determined and approved under subsection (7) in respect of different classes of students or different classes of membership of the Student Guild.

(9) The Statutes may prescribe —

- (a) the classes of membership and the conditions of or qualifications for membership of the Student Guild;
- (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.

(10) In this section —

"Student Guild" means the Edith Cowan University Student Guild.

[Section 41 amended by No. 63 of 1990 ss.18 and 19.]

PART X — MISCELLANEOUS

Governor to be Visitor

42. (1) The Governor shall be the Visitor of the University, and has authority, as and when he thinks fit, to do all things that pertain to the office of Visitor.

(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.]

Exemption from rate or tax

43. (1) No tax or rate may be charged or levied upon 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.

[Section 43 amended by No. 63 of 1990 s.19.]

No religious tests

44. No religious test shall be administered to any person in order to entitle that person to be admitted as an enrolled student of the University or to hold office in the University, or to graduate at the University, or to hold any advantage or privilege of the University.

[Section 44 amended by No. 63 of 1990 s.19.]

PART XI — TRANSITIONAL AND SAVINGS

Termination of office

45. The terms of office of the members of the Council appointed under section 13 of the Colleges Act are hereby terminated by force of this section.

Interim provisions for members of the Council

46. (1) The first Chancellor⁴ of the Council under this Act shall be appointed by the Governor and the term of his appointment shall be for such period not exceeding 3 years as is specified in his instrument of appointment.

(2) Until an elective office on the Council is filled for the first time under this Act by the election of a person in the prescribed manner that office shall be filled by a person who has the prescribed qualification for holding that office, and who is appointed by the Minister.

(3) In subsection (2) "elective office" means an office of member referred to in section 9(1)(c), (d), (e), or (f).

Continuation of Statutes, by-laws and rules

47. (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.]

Staff

48. 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.]

Property

49. 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.]

Superannuation

50. 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.

Associations continued

51. 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.

Board of Academy continued

52. Until a Statute providing for the constitution of a body for the management of the Academy under this Act comes into operation the members of the Board of Management of the Academy holding office as such immediately before the commencement date shall continue in office after that date but the Minister may appoint a person to any office that becomes vacant before the date that the Statute comes into operation.

Continuation of rights of students

53. 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.]

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NOTES

^{1.} This is a compilation of the *Edith Cowan University Act 1984* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Western Australian College of Advanced Education Act 1984</i>	18 of 1984	31 May 1984	1 September 1984 (see <i>Gazette</i> 24 August 1984 p.2567)	Short title subsequently amended by Act No. 63 of 1990 s.19
<i>Acts Amendment (Educational Institutions Superannuation) Act 1985</i>	77 of 1985	20 November 1985	16 December 1985 (see <i>Gazette</i> 13 December 1985 p.4758)	Amended by No. 63 of 1990; sections 14 and 15 transitional ⁵
<i>Acts Amendment Financial Administration and Audit) Act 1985</i>	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	
<i>Acts Amendment and Repeal (Post-Secondary Education) Act 1989</i>	48 of 1989	9 January 1990	1 January 1990 (see section 2)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Western Australian College of Advanced Education Amendment Act 1990</i>	63 of 1990	17 December 1990	1 January 1991 (see s.2)	Sections 20 and 21 transitional ⁶ ; section 22 amends Act No. 77 of 1985

² *Teacher Education Act 1972* repealed by Act No. 100 of 1978 s.5.

³ *Government Employees (Promotions Appeal Board) Act 1945* repealed by Act No. 94 of 1984 s.83.

⁴ Title (as changed by the *Western Australian College of Advanced Education Amendment Act 1990*) substituted under s.7(a)(h) of the *Reprints Act 1984*.

⁵ Sections 14 and 15 of Act No. 77 of 1985 reads as follows —

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

" 14. (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

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- (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.

[Section 14 of Act No.77 of 1985 amended by No. 63 of 1990 s.22]

Rights and liabilities of the Council not affected

15. 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. "

6 Sections 20 and 21 of Act No. 63 of 1990 read as follows:-

Transitional-Bunbury Campus Advisory Board

" 20. Until a Statute providing for the constitution of the Bunbury Campus Advisory Board comes into operation —

- (a) the chairman of the Board of the Bunbury Institute of Advanced Education holding office as such immediately before the coming into operation of this Act shall be the chairman of the Bunbury Campus Advisory Board; and
- (b) the members of the Board of the Bunbury Institute of Advanced Education holding office as such immediately before the coming into operation of this Act shall be the members of the Bunbury Campus Advisory Board,

but the Minister may appoint a person to any office that becomes vacant before the day on which the Statute comes into operation.

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Transitional-Chancellor and Pro-Chancellor

21. The persons who, immediately before the coming into operation of this Act, are the Chairman and the Deputy Chairman of the Council under the principal Act shall be taken to have been elected under the principal Act as amended by this Act to be the Chancellor and the Pro-Chancellor, respectively, of the University for the balance of the respective terms for which they were elected. "

