

Approved for Reprint 12th July, 1977.

WESTERN AUSTRALIA.

WESTERN AUSTRALIAN POST-SECONDARY EDUCATION COMMISSION

No. 84 of 1970.¹

[As amended by Acts—

No. 90 of 1972², assented to 4th December, 1972;

No. 28 of 1976³, assented to 9th June, 1976;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**AN ACT to establish the Western Australian
Post-Secondary Education Commission.**

Long title.
Amended by
No. 28 of 1976,
s.3.

[Assented to 30th November, 1970.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Western Australian Post-Secondary Education Commission Act, 1970-1976.*

Short title.
Amended by
No. 28 of
1976, s.1.

2. This Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.

¹ Came into operation on 23rd April, 1971. See *Gazette* 23/4/71, p. 1213.

² Came into operation on 12th January, 1973. See *Gazette* 22/12/72, p. 4756.

³ Came into operation on 17th December, 1976. See *Gazette* 17/12/76, p. 4967.

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Arrange-
ment.
Amended by
No. 28 of
1976, s.4.

3. The arrangement of this Act is as follows—

PART I.—PRELIMINARY, ss. 1-4.

PART II.—THE WESTERN AUSTRALIAN POST-
SECONDARY EDUCATION COMMISSION, ss. 5-25.

*Division 1.—Establishment and Constitution of
the Commission, ss. 5-11.*

*Division 2.—Functions, Powers and Duties of
the Commission, ss. 12-14.*

Division 3.—Staff, ss. 15-19.

Division 4.—Financial Provisions, ss. 20-22.

Division 5.—Miscellaneous Provisions, ss. 23-25.

Interpreta-
tion.
Amended by
No. 28 of
1976, s.5

4. In this Act unless the contrary intention appears—

“Chairman” means Chairman of the Commission and includes Acting Chairman;

“member” means member of the Commission and includes acting member;

“post-secondary education” means all those activities that are concerned with people who seek further education beyond the age of compulsory schooling and outside the institutions of secondary education and includes a form of education declared under section 23 to be post-secondary education for the purposes of this Act;

“post-secondary education institution” means an institution providing or proposing to provide courses at post-secondary education level;

“proclaimed date” means the date fixed by proclamation for the coming into operation of the Western Australian Tertiary Education Commission Act Amendment Act, 1976;¹

¹ See footnote 3 on page 1.

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“section” means a section of this Act;

“the Commission” means the Western Australian Post-Secondary Education Commission established by this Act.

**PART II.—THE WESTERN AUSTRALIAN POST-
SECONDARY EDUCATION COMMISSION.**

Heading,
amended by
No. 28 of
1976, s.6.

*Division 1.—Establishment and Constitution of the
Commission.*

5. (1) On and after the proclaimed date the body corporate hitherto established under this Act and called the “Western Australian Tertiary Education Commission” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act to be called the “Western Australian Post-Secondary Education Commission”, but so that the corporate identity of the body corporate and its rights and obligations are not affected.

Establish-
ment of
Commission.
Amended by
No. 28 of
1976, s.7.

(1a) A reference to the Western Australian Tertiary Education Commission, whether by use of that name or a similar or abbreviated form of that name—

- (a) in a law of the State passed or made before the proclaimed date;
- (b) in any document or other instrument made, executed, entered into or done before the proclaimed date; or
- (c) made before the proclaimed date in any other manner,

shall, unless the context is such that it would be incorrect or inappropriate so to do, be read and construed as a reference to the Western Australian Post-Secondary Education Commission.

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(1b) For the purposes of subsection (1a) of this section the term "law of the State" means—

- (a) an Act;
- (b) regulations, rules or by-laws having effect by virtue of an Act; and
- (c) an instrument having effect by virtue of an Act or of any regulations, rules or by-laws referred to in paragraph (b) of this subsection.

(2) The Commission—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable, in its corporate name, of acquiring, holding, and disposing of real and personal property and of suing and being sued in that name;
- (c) is capable of doing and suffering all such acts and things as bodies corporate may do and suffer; and
- (d) has, subject to the Minister, the general administration of this Act.

(3) All courts, judges, and persons acting judicially shall take notice of the seal of the Commission affixed to a document and shall presume that it was duly affixed.

(4) The exercise or performance of the powers or functions of the Commission shall not be affected by reason only of there being a vacancy in the office of a member.

6. (1) On and after the proclaimed date the Commission shall be constituted as hereinafter provided.

(2) The Commission shall consist of—

- (a) a person appointed as Chairman of the Commission who shall also be the chief executive officer of the Commission;
- (b) the person for the time being holding or acting in the office of the Director-General of Education under the Education Act, 1928, or a person appointed by that person by notice in writing addressed to the Minister; and
- (c) thirteen other members of whom—
 - (i) two shall be selected for their knowledge of and interest in university education and research;
 - (ii) two shall be selected for their knowledge of and interest in advanced education;
 - (iii) one shall be selected for his knowledge of and interest in teacher education;
 - (iv) two shall be selected for their knowledge of and interest in technical and further education; and
 - (v) six shall be selected for their knowledge of and interest in community affairs in the city and country, employment problems, secondary education, or government.

6A. The following provisions apply to and in relation to the Chairman, that is to say—

- (a) he shall be appointed by the Governor on the recommendation of the Minister for a term not exceeding seven years;

Provisions
as to
Chairman.
Added by
No. 28 of
1976, s.9.

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- (b) the conditions of his service shall be such as the Governor determines;
- (c) he shall be paid such remuneration and allowances as the Governor may from time to time determine;
- (d) he may be re-appointed, from time to time at the expiration of a term of office, unless he has been removed from office by the Governor under paragraph (e) of this section;
- (e) he may, at any time, be removed from office by the Governor for disability, bankruptcy, neglect of duty or misconduct, or if, without the consent of the Governor, he engages in any other remunerative employment; and
- (f) he may at any time resign his office by writing under his hand addressed to the Governor.

Provisions
as to
appointed
members.
Added by
No. 28 of
1976, s.10.

6B. The following provisions apply to and in relation to the members referred to in paragraph (c) of subsection (2) of section 6, that is to say—

- (a) a member shall be appointed by the Governor on the recommendation of the Minister for such term not exceeding four years as is specified in the instrument of his appointment;
- (b) subject to paragraph (c) of this section, all members, on the expiration of their term of office, are, unless otherwise disqualified, eligible for re-appointment;
- (c) a member who has held office for two successive terms is not thereafter eligible to hold office as a member until the expiry of a period of twelve months from the last day on which he was a member;

- (d) the Minister may grant leave of absence to a member upon such terms and conditions as the Minister determines;
- (e) the Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour;
- (f) where the appointment of a member is terminated pursuant to paragraph (e) of this section or a member—
 - (i) becomes permanently incapable of performing his duties as a member;
 - (ii) resigns his office by writing under his hand addressed to the Minister;
 - (iii) is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors; or
 - (iv) is convicted of an indictable offence, his office shall become vacant and shall be filled as a casual vacancy under paragraph (g) of this section;
- (g) where a casual vacancy occurs in the office of a member the Governor may appoint a person to the vacant office and the person so appointed shall, subject to this Act, hold office as a member for the residue of the term of office of the member whose office has become vacant.

7. (1) Where the Minister is satisfied that the Chairman or any other member is incapacitated by illness, absence, or other reasonable cause, from performing the duties of his office, the Minister may appoint a person to be the Acting Chairman to act for the Chairman or an acting member to act for that other member, as the case may be, during his incapacity and that person, while he so acts, shall be deemed to be the Chairman or a member, as the case may be.

Acting
members.

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(2) The Minister may at any time terminate the appointment of an Acting Chairman or an acting member.

(3) No appointment of an Acting Chairman or an acting member and no act done by him shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

Remunera-
tion.
Repealed
and re-
acted by
No. 28 of
1976, s.11.

8. Members other than the Chairman shall be paid such remuneration and allowances as the Minister, on the recommendation of the Public Service Board, from time to time determines.

9. [*Repealed by No. 28 of 1976, s. 12.*]

10. [*Repealed by No. 28 of 1976, s. 12.*]

Meetings of
Commission.

11. (1) The Commission shall hold such meetings as are necessary for the performance of its functions.

(2) The Minister or the Chairman may at any time convene a meeting of the Commission.

(3) The Chairman shall convene the first meeting of the Commission as soon as practicable after the coming into operation of this Act and shall preside at all meetings of the Commission at which he is present.

(4) Where the Chairman is absent from a meeting of the Commission and an Acting Chairman has not been appointed under section 7, or having been so appointed the Acting Chairman is also absent, the members present at the meeting shall elect a member to preside at that meeting and while so presiding the member has all the powers and duties of the Chairman.

(5) At a meeting of the Commission—

- (a) not less than one-half of the total number of members for the time being forms a quorum; and
- (b) a question arising at the meeting shall be determined by a majority of the valid votes of the members present.

(6) Subject to this Act and regulations, the Commission may regulate its procedure in such manner as it thinks fit.

*Division 2.—Functions, Powers and Duties of the
Commission.*

12. (1) The Commission shall have the functions set out in subsection (2) of this section and shall perform those functions subject to the Minister and with due regard to the traditional autonomy of universities and to the major role of universities in areas outside the scope of post-secondary education.

Functions
of Com-
mission.
Repealed
and re-
enacted by
No. 28 of
1976, s.13.

(2) The functions of the Commission are—

- (a) to assist the Minister, and the Government of the State, in the formation of State views on the promotion, development and co-ordination of post-secondary education and for that purpose to make recommendations to the Minister on those matters having regard to the needs of the State, the number of students to be provided for, and the financial and other resources available;
- (b) to make recommendations to the Minister and where appropriate, the relevant Commonwealth education Commissions on the establishment and location of, and the acquisition and reservation of sites for, new post-secondary education institutions;

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- (c) to advise the relevant Commonwealth education Commissions on—
- (i) the levels of financial support requested by post-secondary education institutions, or authorities governing such institutions, for the purposes of post-secondary education; and
 - (ii) requests for a variation from an approved triennial programme of a post-secondary education institution or an authority governing such institutions;
- (d) for the purpose of achieving rationalisation of resources and the avoidance of unnecessary duplication, to—
- (i) advise the governing authorities of the respective post-secondary education institutions; and
 - (ii) make recommendations, where appropriate, to the relevant Commonwealth education Commissions,
- on proposals for the establishment of new post-secondary education courses of study;
- (e) to advise the governing authorities of the respective post-secondary education institutions on—
- (i) the terms and conditions of appointment and employment, including salary payable, of the staff, whether academic or otherwise of those institutions;
 - (ii) all claims relating to the terms and conditions referred to in subparagraph (i) of this paragraph;

- (iii) the fees to be charged by and paid to those institutions for classes or courses, examinations, and academic awards conferred; and
 - (iv) the criteria for entrance to those institutions with a view to avoiding multiple examinations and facilitating, where desirable, the movement of students between those institutions;
- (f) to determine, when so requested by a post-secondary education institution or an authority governing such institutions, the minimum requirements for new academic awards and to accredit those awards; and
- (g) to collaborate, where appropriate, with the relevant State and Commonwealth authorities with regard to the preparation of plans for buildings to be used by post-secondary education institutions, the letting of contracts for the building of such buildings, and the general supervision of building operations in relation to such buildings.

13. The Commission may do all things necessary or convenient to be done for or in connection with the performance of its functions and without limiting the generality of the foregoing may set up committees to investigate and advise the Commission on any aspect of post-secondary education.

Power of the
Commission.
Amended by
No. 28 of
1976, s.14.

14. The Commission shall—

- (a) consider requests and submissions of educational institutions and authorities that relate to the proposals of those

Duties of
Commission.
Repealed
and re-
enacted by
No. 28 of
1976, s.15.

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institutions and authorities for future developments in the post-secondary education;

- (2) confer and collaborate, on matters relating to post-secondary education, with educational institutions and authorities and with departments of the Commonwealth and the States of the Commonwealth and other appropriate bodies or instrumentalities of the Commonwealth or the States of the Commonwealth;
- (c) constantly review all aspects of post-secondary education and, on its motion or the request of the Minister, make reports thereon;
- (d) consult with post-secondary education institutions for the purpose of encouraging, where it is desirable and feasible, the shared use of resources such as expert staff, libraries, computers, laboratories and expensive teaching or research equipment;
- (e) promote and undertake research relevant to the planning, development and effective co-ordination of post-secondary education throughout the State; and
- (f) furnish a report on its activities to the Minister not later than six months after the thirty-first day of each December.

Division 3.—Staff.

Secretary.
Amended by
No. 28 of
1976, s.16.

15. The Governor, on the recommendation of the Commission, shall appoint a person to be the Secretary of the Commission.

Other
officers and
employees.

16. Subject to this Act, the Commission may appoint such officers or employees as it thinks fit for the purposes of this Act, subject to the approval of the Minister.

17. Subject to any relevant award or industrial agreement in force under the Industrial Arbitration Act, 1912, the terms and conditions of appointment and employment of officers or employees of the Commission appointed under section 15 or 16, including the salary payable, are such terms and conditions as the Minister, on the recommendation of the Commission, approves.

Terms and conditions of appointment and employment. Amended by No. 28 of 1976, s.17.

18. Where any person appointed to the office of Chairman under section 6 or appointed under section 15 or 16 was, immediately before being so appointed, an officer of the Public Service of the State or an officer appointed under the Education Act, 1928—

Preservation of rights of officers and employees. Amended by No. 28 of 1976, s.18.

- (a) he retains his existing and accruing rights and in particular his rights, if any, under the Superannuation and Family Benefits Act, 1938; and
- (b) for the purpose of determining those rights, his service as such an officer shall be taken into account as if it were service with the Commission.

19. (1) The Commission shall request that the inclusion of the Commission as a department for the purposes of the Superannuation and Family Benefits Act, 1938, be recommended by the Minister to whom the administration of that Act is committed and be approved by the Treasurer.

Power of Commission to become a department for purposes of Act No. 34 of 1938.

(2) Where the request of the Commission is so recommended and approved, the Treasurer may—

if the Commission enters into the agreement and makes arrangements, which it is authorised to do, required by the proviso to the interpretation of "department" in subsection (1) of section 6 of the Superannuation and Family Benefits Act, 1938,

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approve of the inclusion of the Commission as a department for the purposes of that Act and the Commission shall, for the purposes of that Act only, be deemed to be a department.

(3) An officer or employee of the Commission is not compelled to become a contributor for pension, superannuation, or benefits under an agreement entered into by the Commission pursuant to this section.

Division 4.—Financial Provisions.

Funds of the
Commission.
Amended by
No. 28 of
1976, s.19.

20. (1) The funds available to the Commission for the purpose of enabling it to exercise its functions, powers, and duties under this Act are—

- (a) moneys from time to time appropriated by Parliament for that purpose;
- (b) moneys received by the Commission by way of gifts, bequests, or otherwise; and
- (c) any other moneys made available to the Commission for the purposes of this Act.

(2) The moneys referred to in subsection (1) of this section shall be paid into, and placed to the credit of, an account at the Treasury or at a bank approved by the Treasurer to be called the "Western Australian Post-Secondary Education Commission Account".

(2a) On the proclaimed date, or as soon as practicable thereafter, any money then standing to the credit of an account called the "Western Australian Tertiary Education Commission Account" shall be placed to the credit of the account referred to in subsection (2) of this section.

(3) All expenditure incurred by the Commission for the purposes of giving effect to this Act shall be paid from the account referred to in subsection (2) of this section.

21. Where any money standing to the credit of the Western Australian Post-Secondary Education Commission Account is not immediately required for the purposes of this Act, the Commission may invest it in any investments authorised by law as those in which trust funds may be invested.

Power of Commission to invest certain moneys. Amended by No. 28 of 1976, s.20.

22. (1) The Commission shall cause to be prepared and submitted to the Treasurer, under such headings and in such manner as the Treasurer directs, annual estimates of the revenue and expenditure of the Commission in connection with the carrying out of the functions of the Commission.

Annual estimates of Commission.

(2) Before the annual estimates referred to in subsection (1) of this section are submitted to the Treasurer as required by that subsection, they shall be submitted to, and approved by, the Minister.

Division 5.—Miscellaneous Provisions.

23. The Minister may, by instrument in writing, declare a form of education to be post-secondary education for the purposes of this Act.

Declaration of Minister.

24. The Minister shall lay the report mentioned in paragraph (f) of section 14 before each House of Parliament within twelve sitting days of that House after the receipt of the report from the Commission by the Minister.

Tabling of report. Amended by No. 28 of 1976, s.21.

25. The Governor may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Regulations.