

NOT GOVERNMENT POLICY

FOR THE PURPOSE OF TARGETED CONSULTATION ON THE DRAFT UNIVERSITY ACTS AMENDMENT BILL 2017

A Guide to the *University Legislation Amendment Bill 2017*

The University Legislation Amendment Bill 2017 (the Bill) makes amendments to the *Central Queensland University Act 1998* (CQU Act); *James Cook University Act 1997* (JCU Act); *Griffith University Act 1998* (GU Act); *Queensland University of Technology Act 1998* (QUT Act); *University of the Sunshine Coast Act 1998* (USC Act); *University of Southern Queensland Act 1998* (USQ Act); and *University of Queensland Act 1998* (UQ Act) (collectively referred to in this guide as the University Acts).

Part 1 of the Bill deals with preliminary matters and includes clause 2 which provides for the commencement of the amendments. In accordance with clause 2, the amendments contained in Part 2 of the Bill (Clauses 3 to 65) will commence on assent and the amendments contained in Part 3 of the Bill (Clauses 66 to 143) will commence on proclamation.

Amendments that will commence on assent (Part 2 of Bill)

Delegations

Application: All Universities.

Bill references: CQU Act – clause 4; GU Act – clause 13; JCU Act – clause 21; QUT Act – clause – 30; UQ Act – clause 39; USQ Act – clause 49; and USC Act – clause 58.

Background

Section 11 of the University Acts provides that the governing body may delegate certain powers under the Act to:

- a) an appropriately qualified member of the senate;
- b) an appropriately qualified committee that includes 1 or more members of the senate; or
- c) an appropriately qualified member of the university's staff.

Section 11(2) of the University Acts provides that the governing body may not delegate the power to: make university statutes or rules; adopt the annual budget; and approve spending of funds available to the university by way of bequests, donation or special grant.

Currently, the University Acts do not permit sub-delegation.

Proposed amendment in Bill

The Bill amends section 11(2) of the University Acts so that there is no limit on the governing body's power to delegate the approval of spending of funds available to the university by way of bequests, donation or special grant.

The Bill also inserts a new section 11(3) to allow the governing body, when delegating its powers to the vice-chancellor, to permit the vice-chancellor to further delegate that power to an appropriately qualified member of the university staff. Under the proposed amendment the governing body will be able to determine which powers may be sub-delegated by the vice-chancellor and the extent of this delegation.

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Ensuring integrity of the membership of the governing body

Application: All Universities.

Bill references: CQU Act – clauses 10 and 11; GU Act – clauses 18 and 19; JCU Act – clauses 27 and 28 ; QUT Act - clauses 36 and 37; UQ Act – clauses 46 and 47; USQ Act – clauses 55 and 56; and USC Act – clauses 64 and 65.

Background

Currently a person is disqualified from membership of a university governing body if they have been convicted of an indictable offence or are an insolvent under administration. The University Acts provide the Minister and the governing body with the power to obtain criminal history information from the Commissioner of Police.

The Department of Education and Training has identified that the current provisions do not reflect modern drafting, do not include the obligation for members of the governing body to disclose changes in circumstances and do not include safeguards to protect a person's criminal history information from inappropriate disclosure.

Proposed amendment in Bill

The Bill inserts a new section that imposes a requirement on members of the governing body to disclose matters that would mean the person is ineligible to be a member of the governing body to the chancellor or, for members appointed by the Governor in Council, the Minister. This obligation is similar to the obligation placed on members of other statutory bodies within the education and training portfolios (examples in other Queensland legislation: *TAFE Queensland Act 2013*, section 36; *Education (Accreditation of Non-State Schools Act 2001*, section 114C).

The Bill inserts a new section that states that a person's criminal history information obtained by the Minister or the university's governing body for the purposes of determining a person's suitability for appointment is confidential. This is a standard requirement in other legislation relating to criminal history checks for significant appointments. Under the Bill, the same protection also applies to the information that is disclosed under the new requirement for members to disclose matters that would mean the person is ineligible to continue on the governing body.

At present, a person is not eligible to be a member of a governing body if they have been convicted of an indictable offence. In the University Acts an indictable offence is defined to include an indictable offence dealt with summarily, whether or not the *Criminal Code*, section 659, applies to the offence. The Bill includes amendments to align the legislative definition of an indictable offence with the definition that applies to most other statutory bodies within the education and training portfolios. The amendment removes the requirement to consider indictable offences heard summarily when determining the person's suitability. This is considered an appropriate test for ensuring the integrity of appointments to the governing body as such offences are usually less serious.

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Circumstances when Deputy Chancellor is to act as Chancellor

Application: All Universities

Bill references: CQU Act – clause 6; GU Act – clause 15; JCU Act – clause 23; QUT Act – clause – 32; UQ Act – clause 41; USQ Act – clause 51; and USC Act – clause 60.

Background

Currently in most University Acts, section 31(4)(b) provides that the deputy chancellor is to act as chancellor when there is a vacancy in the office of the chancellor; and while the chancellor is absent from the State or, for another reason, cannot perform the function of the office.

Proposed amendment in Bill

The condition that the deputy chancellor acts as chancellor when the chancellor is absent from the State no longer reflects the modern operating environment for universities because the chancellor is often absent from the State on university business; or may be out of the State for other reasons but due to modern technology can continue to act as the chancellor.

The Bill modernises this provision by removing the specific condition that the deputy chancellor is to act for the chancellor when the chancellor is out of the State and simply provide that the deputy chancellor is to act as a chancellor when there is a vacancy in the office of chancellor or the chancellor cannot perform the functions of the office.

While the JCU Act does not provide that the deputy chancellor acts as chancellor when the chancellor is absent from the State, the Bill does amend section 31 of the JCU Act to modernise the drafting of this section and ensure there is consistency across the University Acts.

Term of appointment for president of the academic board at UQ

Application: University of Queensland.

Bill reference: UQ Act - clause 43

Background

The CQU, JCU, USC, USQ, and UQ Acts provide for the establishment of an academic board for the university. The president or chairperson of the academic board is a member of the governing body as one of the ‘official members’.

For CQU, JCU, USC, and USQ the chairperson of the academic board is determined by the governing body and holds office for the term, not longer than 3 years, decided by the governing body. The UQ Act provides that the president of the academic board is determined by the UQ Senate and holds office for the term, not longer than 1 year, decided by the Senate.

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Proposed amendment

The Bill amends the UQ Act to provide that the president holds office for a term decided by the senate that is not more than 3 years. This aligns the maximum term of appointment for the UQ president of the academic board with the maximum term of appointment for CQU, JCU, USC and USQ.

Amendments that will commence on proclamation (Part 3 of Bill)

Removal of university statutes

Application: All Universities.

Bill references: CQU Act – clauses 75 and 76; GU Act – clauses 86 and 87; JCU Act – clauses 99 and 100; QUT Act - clauses 112 and 113; UQ Act – clauses 124 and 125; USQ Act - clauses 136 and 137; and USC Act – clauses 148 and 149.

Background

The University Acts enable the governing bodies to make university statutes on certain matters including: admission and enrolment; entitlement to degrees; student discipline; and conduct of elections for membership of the governing body. The University Acts also allow university rules to be made under a university statute.

Universities have identified that the university statutes are not routinely used because the process to make a statute is complex and time consuming, and the statutes are subject to periodic expiry under the *Statutory Instruments Act 1992*. Further, the use of statutes is no longer consistent with the modern regulatory environment that applies to universities.

Proposed amendments

The Bill removes the ability for the governing body to make university statutes.

As a result of the removal of the statutes a number of consequential amendments are required including:

- a) to remove the ability to establish colleges of the university by statute (CQU, JCU, QUT, UQ, USQ and USC Acts);
- b) to remove the requirement to consult with the relevant university student association on statutes affecting the association (CQU, GU, JCU, QUT, USQ and USC Acts);
- c) to remove the making of rules under a university statute (CQU, GU, JCU, QUT, UQ, USC and USQ Acts); and
- d) to remove section 59 that provides for the council to make a statute providing for review of a decision of the university to demand a payment for the cost of seizing, removing, holding and returning the vehicle (USC Act).

On commencement of the amendments, the Bill will also repeal any existing statutes. In preparation for the commencement, universities will need to remake any current statutes as university policies.

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Requirement to have an elections policy

Application: All Universities.

Bill references: CQU Act – clause 72; GU Act – clause 84; JCU Act – clause 95; QUT Act-
clause – 108; UQ Act – clause 121; USQ Act – clause 133; and USC Act –
clause 145.

Background

Section 15 of the University Acts currently prescribes who may vote in an election for a particular category of elected member (e.g. academic staff, general staff and students). For some universities, a university statute may provide for eligibility to vote. In addition, the University Acts provide the relevant governing body with the power to make a statute about the conduct of elections.

Proposed amendment

With the removal of the ability for the governing body to make statutes amendments are required to remove the references to statutes relating to elections.

However, to ensure the fair and transparent conduct of elections it is proposed to provide that the governing body must make and adhere to an elections policy.

The Bill inserts new section 26AA which provides that the council must make a policy about the conduct of elections. Section 26AA outlines what must be included in this policy.

New section 26AC provides for the eligibility to vote in governing body elections and allows for the elections policy to prescribe other eligibility requirements. It is intended that these amendments reflect the existing legislation and practices of universities.

With the requirement to make an elections policy consequential amendments are made to other sections within the University Acts. The following consequential amendments also clarify the nature of the entity mentioned in the section and reflect current practice in relation to elections:

- a) amendments to section 21 of the University Acts which deals with failure to elect an elected member; and
- b) amendments to section 24 of the University Acts which deals with when the office of a member becomes vacant.