

2005

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

UNIVERSITY OF CANBERRA AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated with the authority of
Ms Katy Gallagher MLA
Minister for Education and Training

Outline

The purpose of the legislation is to enable the University of Canberra to meet the requirements of the National Governance Protocols for universities, as specified in the Commonwealth *Higher Education Support Act 2003 – Section 33-15*.

Background

The Bill is being introduced to bring the *University of Canberra Act 1989* into line with the Commonwealth's revised legislation governing higher education provider funding. All Australian universities are able to access additional funding from the Commonwealth in return for agreeing to embed national governance protocols in their enabling legislation.

The University of Canberra has sought the Government's assistance in amending the University of Canberra Act to comply with the new Commonwealth legislation and National Governance Protocols. The amendments relate to membership of the University Council, and include:

- amending the manner in which the Deputy Chancellor is appointed to the Council;
- limiting the maximum term of Council members to twelve years;
- specifying the duties of Council members, consistent with best practice in corporate governance;
- providing for sanctions when those duties are breached;
- amending the protections to be available to members, consistent with the Corporations Act; and
- supplementing the circumstances in which members must vacate their office to include disqualification as a company director, under the Corporations Act.

The amount of funding available to the University once it has amended its legislation is in the order of an additional 2.5% in 2006, rising to 7.5% in 2008. This equates to approximately 4 million dollars in 2008. It is vital the University has access to these additional funds, for the benefit of current and future students.

Details

1. Name of Act

Names the Act.

2. Commencement

States the date on which the legislation takes effect.

3. Legislation amended

States the Act is to amend the *University of Canberra Act 1989*. The *Higher Education Support Act 2003* (Cwlth), section 33-15 provides for increased financial assistance to universities that satisfy certain requirements, including the applicable National Governance Protocols.

4. Section 11 (1) (b)

National Governance Protocol 3 (see par 7.5.15) includes the requirement that, with stated exceptions, the members of the governing body of a university must be personally appointed. The exceptions are the chancellor, the vice-chancellor and the presiding member of an academic board who may be on the governing body because of their position.

Section 11 deals with membership of the council. Paragraph (1) (b) provides that the deputy chancellor is a member of the council because of that person's position. This amendment omits the paragraph.

5. Section 11 (1)

This amendment renumbers paragraphs when the Act is next republished under the Legislation Act and is consequential on the omission of section 11 (1) (b) by another amendment.

6. Section 11 (2)

This amendment increases from 2 to 3 the number of extra people the council may appoint to exercise its functions efficiently. It is related to the omission of section 11 (1) (b) by another amendment.

7. New section 11 (6)

National Governance Protocol 6 (see par 7.5.50) includes the requirement that a university's governing body must establish the maximum period that a person may serve on the body

should not generally exceed 12 years unless otherwise specifically agreed by a majority of the governing body.

This amendment provides for a maximum period or periods of 12 years or any other period set by the council.

8. Section 12

National Governance Protocol 3 (see par 7.5.25) provides that a member of a university's governing body automatically vacates the position if the person is, or becomes, disqualified from acting as a director of a company or managing corporations under the Corporations Act, part 2D.6.

This amendment inserts new section 12 (1) (b) which provides that a person is not qualified to become or remain a member of the council if the person is disqualified under the Corporations Act, part 2D.6. The period of disqualification under existing section 12 (2) is increased from 2 years to 5 years to bring it into line with the disqualification period under the Corporations Act.

Existing section 12 does not apply to the vice-chancellor. This exception is not included in new section 12 and, accordingly, the vice-chancellor is covered by the same qualification requirements as the other members of the council.

Existing section 12 (1) (b) (which is about bankruptcy and personal insolvency agreements) is omitted because these matters are grounds for automatic disqualification under the Corporations Act, part 2D.6 (see s 206A).

Existing section 12 (1) (c) provides for disqualification if a person has been convicted of an offence against a Commonwealth, State or Territory law and sentenced to imprisonment for 1 year or longer. It is updated in new section 12 (1) (c) and (d) in accordance with current drafting practice. In particular, a person is disqualified if the person is convicted of an offence committed outside Australia that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

9. New section 12A

This amendment gives effect to National Governance Protocol 3 (see par 7.5.20). It also includes in subsection (2) (c) the additional elements of the improper use of information and the improper use of position or information to cause detriment to the university or someone else (see section (2) (c) (ii)).

10. Section 14 (1) and (3)

Section 14 is about the disclosure of interests by council members. This amendment brings the references to interest into line with new section 12A (2) (a) and (b) which is inserted by another amendment. Section 14 operates subject to the University's statutes (see section (4)). Accordingly, details of council members' obligations etc in relation to disclosure of interests (including, for example, conformity with a director's obligations under the Corporations Act) can be set-out in the statutes.

11. Section 15 (1)

This amendment is related to the removal of an exception for the vice-chancellor from section 12 by another amendment.

12. New section 15 (1) (ab)

This amendment provides that the office of a member of the council becomes vacant if the member is removed from office under new section 12A (4) which is inserted by another amendment.

13. Section 15 (1) (e)

Section 15 (1) (e) provides that the office of a member of the council (other than the vice-chancellor) becomes vacant if the member, without reasonable excuse, contravenes section 14 (1). That section is about the disclosure of interests by council members.

This amendment omits the paragraph because a council member (including the vice-chancellor) who fails to disclose a conflict of interest may be removed under new section 12A (4), which is inserted by another amendment.

14. Section 15 (1)

This amendment renumbers paragraphs when Act next republished under Legislation Act. This amendment is consequential on the insertion of new section 15 (1) (ab) and the omission of section 15 (1) (e).

15. New section 24 (3)

The chancellor is automatically a member of the university's council (see section 11 (1) (a)). This amendment is related to new section 12 (1) (b) which provides that a person is not qualified to become or remain a member of the council if the person is disqualified under the Corporations Act, part 2D.6.

16. Section 24A (1)

This amendment ensures that the Deputy Chancellor remains a member of the council. It is related to the omission of section 11 (1) (b) by another amendment.

17. New section 25 (4)

The vice-chancellor is automatically a member of the university's council (see section 11 (1) (c)). This amendment is related to new section 12 (1) (b) which provides that a person is not qualified to become or remain a member of the council if the person is disqualified under the Corporations Act, part 2D.6.

18. Section 40 (2) (e) (iii)

This amendment brings the reference to pecuniary interests into line with that in new section 12A (2) (a) and (b) which is inserted by another amendment.