

2015

LEGISLATIVE ASSEMBLY FOR THE

AUSTRALIAN CAPITAL TERRITORY

UNIVERSITY OF CANBERRA AMENDMENT BILL 2015

EXPLANATORY STATEMENT

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Overview of the Bill

The University of Canberra Amendment Bill 2015 (the Bill) amends the *University of Canberra Act 1989* (UC Act), to give the University of Canberra (UC) greater clarity of purpose and authority in creating and pursuing commercial opportunities and modernises some of its governance arrangements.

In particular, the Bill amends some provisions relating to the governance and operations of the UC and its Council.

The expansion of UC's functions will clarify that the UC may provide services to benefit the broader community, not just its students. The expansion of UC's functions to include cultural, sporting, professional, technical and vocational services to the community; and the commercial development or exploitation of its property, will create a greater range of economic opportunities for the UC, effectively broadening its revenue base and lessening its dependence on Government funding and support.

Outline of the Provisions

Part 1 Title

Clause 1 - Name of Act

This clause names the Act as the *University of Canberra Amendment Act 2015*.

Clause 2 - Commencement

This is a clause setting out when the Act will commence. It is intended the Act will commence on the day after its notification day.

It should be noted the naming and commencement provisions automatically commence on the notification day, as specified in the Legislation Act 2001, s 75 (1).

Clause 3 - Legislation amended

This clause identifies the legislation amended by the Act. It indicates the Act amends the *University of Canberra Act 1989*.

Clause 4 - Functions of university New section 6 (1) (ea) and (eb)

This clause inserts information about expanded functions for UC, namely:

(ea) to develop and provide cultural, sporting, professional, technical and vocational services to the community; and

(eb) to participate in public discourse.

These activities are consistent with some activities already being undertaken by UC as part of its day-to-day operations. The new functions make it explicit that part of UC's business is to provide services to the community, beyond the specifically student related functions.

The activities captured by the new functions are those within the commonly understood meaning. For example, cultural services would include, but are not limited to, the development and delivery of artistic endeavours which raise awareness and appreciation of different cultural backgrounds and traditions as a service to the community. Sporting services may include, for example, the provisions of coaching, facilities or expertise to community teams. Technical services could include consultancy and advisory services that will benefit the community; while vocational services include the provision of vocational education and training services to people within the community.

Clause 5 - New section 6 (1) (g) and (h)

This clause inserts information about the way in which UC may exercise its functions and is intended to clarify that UC may act in a way similar to an individual with regard to being able to commercially exploit or develop property in which UC has an interest. It does this by inserting:

(g) to commercially exploit or develop, for the university's benefit, any property of the university including any facility, resource, real property or other right or interest; and

An example is provided to illustrate that the type of property to which the clause applies, is wider than just land and buildings, it encompasses for example, the practical application and development of study, research, knowledge and intellectual or real property.

This expansion of functions to enable the commercial development or exploitation of property, will create a greater range of economic opportunities for the UC, effectively broadening its revenue base and lessening its dependence on Government funding and support.

Note that an example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

The following section 6(1)(h) has also been added to link in any other functions granted by the UC Act or any other territory law:

(h) to exercise any other function given to it under this Act or another territory law.

Clause 6 - Values and principles of university New section 6A (f)

This clause (f) puts in legislation UC's commitment to reconciliation with Aboriginal and Torres Strait Islander people through education and research.

Clause 7 - Powers of university Section 7 (1), new example

This clause provides an example under section 7 (1) to clarify that, under section 7 in combination with the new section 6(1)(g), UC will have the power to enter into contracts with third parties in order to commercially exploit and develop its property, for the university's benefit. In exercising its functions, the UC may (amongst other things) acquire new property, develop existing property, and enter into contracts with third parties for the purpose of commercially exploiting or developing any property of the university for the university's benefit. It can do these things as if it were a natural person, consistent with the *Financial Management Act 1996*. This example has been included to provide more confidence to third parties who contract with UC, that UC is able to enter into commercial arrangements to exploit and develop its property for the university's benefit.

Clause 8 — Powers of University section 7 (2) (a) omission

This clause omits references to 'real' and 'personal' types of property. The definition of property within the Legislation Act, *"any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes a thing in action"* makes the references unnecessary.

Clause 9 — Powers of University Section 7 (2) (p) substitution

This clause will substitute the word 'function' with 'power' in Section 7 (2) (p), so that it reads: *to exercise any other power given to it under this Act or another territory law*. This amendment is

consistent with section 7 dealing with powers rather than functions, and it refers to the fact that UC is also granted powers under other legislation.

Clause 10 - Powers of council New section 10 (4)

This clause authorises UC's Council to determine the remuneration of Council members. Any determination set by the Council must be passed by at least a two-thirds majority.

This amendment will allow the Council to set remuneration for its members and is intended to enhance the Council's ability to attract and retain qualified and experienced individuals for Council positions who would be helping to steer the course of the UC in the years ahead; and thus ultimately strengthen the governance of UC.

The skills mix expected of the Council will widen with the broader functions introduced by this Bill.

Clause 11 - Constitution of council Section 11 (3)

This substitute clause subjects all Council members who are appointed by the Chief Minister to appointment and remuneration conditions agreed between the Executive and the member, subject to —

- (a) any resolution passed by the Council under section 10 (4) (a ***Council resolution***) for the member; or
- (b) if no resolution has been passed—any determination under the *Remuneration Tribunal Act 1995*.
 - If, immediately before the commencement day, a determination under the *Remuneration Tribunal Act 1995* was in force for a Council member appointed by the Chief Minister, the determination continues to apply until:
 - the Council passes a resolution for the member; or
 - the determination is expired or repealed.

This amendment puts UC in a position where it is more able to compete with other universities over Council members through competitive conditions and remuneration; and thus ultimately the Government expects the Council will have qualified, experienced and skilled individuals involved in the Council's governance of UC.

This clause subjects all Council members appointed by the Chief Minister to a minimum remuneration that is determined by the Remuneration Tribunal, with higher amounts able to be put in place.

(3A) For subsection (3) (a), if a determination under the *Remuneration Tribunal Act 1995* applies to a member appointed by the Chief Minister and the determination is inconsistent with a Council resolution:

- (a) the Council resolution prevails to the extent of the inconsistency, but;
- (b) if the member would receive a smaller entitlement or less remuneration under the Council resolution than under the determination—the determination prevails to the extent of the inconsistency.

(3B) Subsections (3) and (3A) are intended to apply, despite the *Financial Management Act 1996*, section 78 (8) (Appointment of governing board members generally).

Clause 12 - Casual vacancies New section 16 (3)

This clause allows for casual appointments should a lack of nominations prevent the election of a Council member.

Clause 13 - Delegation by council New section 17 (1) (d)

This clause broadens the delegation power of the Council to include any other persons, who are not officers of Council or employees of UC, to carry out delegated functions for the Council.

Clause 14 - Chancellor New section 24 (4) and (5)

This clause allows for the Council, by special resolution, to end the appointment of the Chancellor if the Council deems it in the best interests of UC. *Special resolution*, of the Council, means a resolution passed by at least two thirds of the members of the Council at two consecutive meetings.

This clause and the next one on the process for removing the Chancellor or Deputy-Chancellor from office give the Council a further avenue for ensuring these officers maintain the confidence of the Council.

This clause also clarifies:

Note A chancellor's appointment also ends if the Chancellor resigns (see Legislation Act, s 210), or may end if the Chancellor fails to comply with a duty under s 12A (1) or (2) (see s 12A (4)).

In this section of the Bill, ***special resolution***, of the Council, means a resolution agreed to by at least two-thirds of the total members of the Council for the time being at 2 consecutive meetings of the Council.

Clause 15 - Deputy Chancellor New section 24A (4) and (5)

This clause allows for the Council, by special resolution, to similarly end the appointment of the Deputy Chancellor if the Council deems it in the best interests of UC.

This clause also clarifies:

Note A Deputy Chancellor's appointment also ends if the Deputy Chancellor resigns (see Legislation Act, s 210), or may end if the Deputy Chancellor fails to comply with a duty under s 12A (1) or (2) (see s 12A (4)).

In this section of the Bill, ***special resolution***, of the Council, means a resolution agreed to by at least two-thirds of the total members of the Council for the time being at 2 consecutive meetings of the Council.

Part5 Miscellaneous

Clause 16 – New Part 5 Miscellaneous

New Section 43 – Review of Act

The new arrangements will be reviewed in five years and the responsible Minister will present a report to the Legislative Assembly on the outcomes of the review.

In particular, the review will consider the economic and other benefits gained by UC and the community in the ACT region because of:

- (a) the amendments to the Act by the *University of Canberra Amendment Act 2015*; and
- (b) any other changes to territory law prescribed by regulation.

The Minister will present a report of the review to the Legislative Assembly no earlier than 5 years after the day the University of Canberra Amendment Act 2015 commences but no later than 3 months after the end of that 5-year period.

This section expires 7 years after the day it commences, as once the review has been completed, there will no longer be need of this clause.

Clause 17 - Dictionary, note 2

This clause inserts the definitions of 'Executive' and 'property' from the Legislation Act into the Act's dictionary.

Human Rights Issues

This Bill will not impact on human rights in any detrimental fashion. UC's commitment to reconciliation with Aboriginal and Torres Strait Islanders will be enshrined in legislation, and thus strengthened, through the Bill. Given the importance this Government attaches to opening opportunities for people from Aboriginal and Torres Strait Islander background through education, research, and through involvement in government, this Bill represents a step in a positive direction.

The extension of functions to include, for example, cultural services should support UC being involved in the development and delivery of artistic endeavours which raise awareness and appreciation of different cultural backgrounds and traditions as a service to the community.

Environmental Issues

This Bill will not impact on climate change nor on the environment specifically, since development of property at the UC campus is governed by other legislation that limits environmental impact.

In summary, this Bill is important for setting UC on the path to be able to compete effectively in a less regulated market and to grow and prosper through expanding its activities and leveraging from its assets and property in more diverse ways.