

UNIVERSITIES LEGISLATION AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM AND CLAUSE NOTES

OVERVIEW

The *Universities Legislation Amendment Bill 2015* amends the *Curtin University of Technology Act 1966* (Curtin Act), *Edith Cowan University Act 1984* (Edith Cowan Act), *Murdoch University Act 1973* (Murdoch Act), the *University of Western Australia Act 1911* (UWA Act) and the *University of Notre Dame Australia Act 1989* (Notre Dame Act). It consequentially amends 10 other Acts and repeals two spent Acts.

The Bill has some common amendments that are the same, or very similar, for more than one Act and amendments that are specific to only one Act.

The common amendments relate to provisions for: borrowing; commercial activities; remuneration of members of governing and advisory bodies; the tabling and disallowance of statutes; student amenities and services fees; the maximum penalty for a by-law infringement; and the size and composition of university governing bodies (Senates and Councils).

The university-specific amendments have been sought by the universities themselves and are mainly machinery amendments that address matters such as: the filling of casual vacancies; nomenclature of university officers; gender neutral language; and the repeal or amendment of obsolete provisions.

University-specific amendments of a more substantial nature include:

- changing the name of Curtin University of Technology to Curtin University;
- repeal of certain provisions and amendment of others in the Curtin Act related to the University's vocational education and training operations in Kalgoorlie;
- amendments to the Edith Cowan Act so that the Boards of the South West Campus (Bunbury) and the Western Australian Academy of Performing Arts become advisory bodies without management functions; and
- the sole substantive amendment to the Notre Dame Act, which is the deletion of the provision that no State moneys are to be appropriated for the purposes of the University.

Clause Notes

PART 1 – PRELIMINARY MATTERS

Clause 1: Short title

The Act will be the *Universities Legislation Amendment Act 2016*.

Clause 2: Commencement

Provides for Part 1 of the Act to come into operation the day it receives Royal Assent, and for the rest of the Act on such day or days as are fixed by proclamation.

PART 2 – CURTIN UNIVERSITY OF TECHNOLOGY ACT 1996 AMENDED

Clause 3: Act amended

This clause cites the title of the principal Act to be amended by Part 2 of this Bill.

Clause 4: Long title amended

Amends the long title by deleting “of Technology” from “Curtin University of Technology” reflecting the fact the Bill formally changes the name of this university to “Curtin University”.

Clause 5: Part 1A heading replaced

Part 1A heading is replaced by “Part 1 –Preliminary”

Clause 6: Section 1 amended

This clause amends **Section 1 - Short title**.
“of Technology” is deleted.

Clause 7: Section 4 amended

This clause amends **section 4 - Interpretation**
Deletes 3 definitions, adds 3 new ones and amends 3 others.

Clause 8: Part I heading replaced

This clause replaces the Part 1 Heading – **Part 1 - The Curtin University of Technology** – with:

Part 2 – Curtin University

Clause 9: Section 5 amended

This clause amends **section 5 – Establishment of the Curtin University of Technology**.

Clause 9(1) establishes the University as “Curtin University” and as the same body corporate as its predecessors: “Curtin University of Technology” and “Western Australian Institute of Technology”.

Clause 9(2)(a) makes the Minister responsible for approving leases instead of the Governor.

Clause 9(2)(b) enables the University to enter into business arrangements.

Clause 10: Section 7 amended

This clause amends **section 7 – Functions of the University.**

Proposed subsections (1)(a), (b) and (ga) are contemporary restatements of the University's core functions: teaching, research and community engagement. Proposed subsections (1)(ea) and (eb) are inserted to remove doubt as to whether the University may use its assets commercially and to generate revenue for the purpose of funding and carrying out its core functions.

Clause 11: Section 8 amended

This clause amends **section 8 – The Council**

Makes it explicit that the Curtin Council is the governing authority of the University and that its authority includes the Kalgoorlie Campus.

Clause 12: Section 9 amended

This clause amends **section 9 – Constitution of the Council**

It deletes the current provisions for the size and composition of the Curtin Council and inserts instead new provisions (1)(a) to (i). The maximum size is 17 members instead of 24. Governor's appointees are 3 instead of 6, the appointee of the Minister for Education is deleted, the Vice-Chancellor is retained *ex officio*, elected academic staff reduce from 2 to 1, 2 elected students are retained, 1 elected salaried staff member is retained, 1 elected Alumni Association member is replaced by 2 graduates of the University, the Chancellor is retained, co-opted members increase from 3 to a maximum of 5, the provision for the appointment by Council of up to 3 persons representing the interests of the University elsewhere than the Bentley campus is deleted, and the Chair of Academic Board is retained.

Proposed section 9(2A) provides that a person who holds an elective office is not disqualified from becoming a member of the Council.

Clause 13: Nominations Committee

This clause inserts **new section 9AA – Nominations Committee** which requires the Council to establish and maintain a committee of up to 6 Council members called the Nominations Committee. Proposed section 9AA(2) precludes certain Council members from membership of this Committee. Subsection (4) of the proposed section sets out the Committee's functions which are essentially to do with the recommending of persons for appointment to non-elected positions on the Council and the Kalgoorlie Campus Council. Subsection (5) provides that the fact that the Committee has not recommended a person does not prevent the person from being appointed or holding office.

Clause 14: Section 9A replaced

This clause replaces **section 9A – Term of Office of Members.**

Sets out the terms of office for Council members. Generally, members, other than the elected student members, are to be given

terms of 3 years, although subsections (4) and (5) do allow for shorter terms where it is desirable for one or other of the reasons at subsection 4(a) and 4(b). Student members have 1-year terms. Members, other than student members, may serve a maximum of 3 successive terms. Student members may serve a maximum of 2 successive terms. The Vice-Chancellor is an *ex officio* member of the Council.

This clause sees the first of many amendments throughout the Bill that achieve gender neutrality in drafting: 'his' and 'her' are now 'their' and 'he' and 'she' are now 'they'.

Clause 15: Section 10 amended

This clause amends **section 10 – Vacation of Office**.

This clause adjusts the wording of subsections (b) and (g), related to resignation or termination of membership of Council, in accord with the proposed provisions of section 9. It also establishes gender neutral language in the section.

Clause 16: Section 10AA amended

Housekeeping amendment – replaces “2/3” with “two-thirds”.

Clause 17: Section 10A replaced

This clause replaces **section 10A – Casual vacancies**.

Simplifies the provision for the filling of casual vacancies by treating casual vacancies as though they are ordinary (full term) vacancies. Note, however, that the term for the appointed replacement member does not, by virtue of proposed section 9A(4), need to be for the maximum possible period.

Clause 18: Section 11 amended

This clause amends **section 11 – Meetings of Council**.

This clause reduces, in keeping with the proposed smaller overall size of Council, from 4 to 3, the minimum number of members needed to request the Chancellor to convene a (special) Council meeting.

Clause 19: Section 14A inserted

This clause inserts **new section 14A – Remuneration and allowances for Council members**.

This clause provides for remuneration (if any) and allowances (if any) of members of Council, to be determined by the Salaries and Allowances Tribunal. Clauses 191 to 193 of this Bill consequentially amend the *Salaries and Allowances Act 1975*. This new section is being inserted to remove doubt as to the University's legal capacity to remunerate and pay allowances.

Clause 20: Sections 14 and 15 replaced

This clause replaces sections **section 14 – Chief executive officer** and **section 15 – Delegation by Council**.

Modernises the language of current section 14 - references are to

Vice-Chancellor rather than the chief executive officer and enable the Vice-Chancellor to use other titles, e.g. President, where it is appropriate.

The clause adjusts section 15 to take account of other proposed amendments and provides that the Council may authorise a delegate to sub-delegate (something not currently provided for).

Clause 21: Section 17 amended

This clause amends **section 17 – Power of Council to appoint and dismiss staff**.

This clause updates the reference to conditions of employment of staff (the *Industrial Arbitration Act 1912* was repealed in 1979).

Clause 22: Section 17A replaced

This clause replaces **section 17A – Power of University to provide housing**.

This clause combines current provisions at section 17A for staff residential accommodation and those at section 20(3) for student accommodation into a new section 17A covering both staff and students. Proposed 17A(2) is currently part of section 20(3) and provides that Ministerial approval is not required for leases greater than 21 years provided they serve the purposes of section 17A.

Clause 23: Section 20 amended

This clause amends **section 20 – Vesting and control of land**.

Subclause (1) substitutes “the State” for “Her Majesty”.

Subclause (2) deletes subsection 20(3), which by clause 22 has been moved to new section 17A.

Subclause (3) links section 20(2) to proposed new section 22D. The intention is that Crown land legitimately leased by the University under proposed new Division 2C for a commercial purpose shall not be caught by section 20(2)’s provision that land used for a purpose beyond the purposes, or those incidental to the purposes, of the University shall revert to and revest in Her Majesty (now the State).

Clause 24: Section 20A amended

This clause amends **section 20A – By-laws** which deals with the making and application of the University’s by-laws.

Subclause 24(1) replaces 20A(1) with a new subsection (1) which defines for the purpose of the section “authorised person”, “contractor” and “University lands”. Clause 24(1) also inserts a new section 20A(2A) which enables the Vice-Chancellor to appoint persons to deal with the by-law made under subsection (2)(k) (removal of vehicles) and the collection of penalties for by-law infringements enabled under subsection (4) of section 20A.

Subclause 24(2) substitutes all references in the section to “member of the Police Force” with “police officer”.

Subclause 24(3) increases the maximum penalty for by-law infringements from \$500 to \$1 000.

Subclause 24(4) inserts new section 20A(8A) which provides that by-laws apply to leased land unless expressly excluded by the lease.

Clause 25: Section 21 amended

This clause amends **section 21 – Powers of Council**.

Tidies the language of the section by deleting two references to the possibility of the University delivering courses “below tertiary level”.

Clause 26: Part 1 Division 2A deleted

This clause deletes **Part 1 Division 2A, which runs from section 21A to 21G** and deals with the establishment, functions and operations of “Branches of the University”. Branches of the University ceased operation some years ago and the University no longer needs these powers.

Clause 27: Section 21H amended

This clause amends **section 21H – Definitions** (for the purpose of Division 2B – Kalgoorlie Campus).

Section 21H is the first of 9 sections that make up Part 1 Division 2B – Kalgoorlie Campus. The Division was inserted in the Act in 1996 following the then Government’s decision to bring what was then Kalgoorlie (TAFE) College under the control of Curtin University. More recently the decision has been taken to return what had become known as “VTEC” under Curtin, to be part of a TAFE College under the *Vocational Education and Training Act 1996*.

Section 21H has definitions for the purpose of Division 2B. Clause 27 amends those definitions in line with amendments to the remainder of the Division proposed by clauses 28 to 31.

Clause 28: Section 21I replaced

This clause amends **section 21I – Kalgoorlie Campus** – which requires the University “to establish and maintain the Kalgoorlie Campus”. Clause 28 deletes “establish” as the Campus already exists. In section 21I(2)(a), this clause replaces “shall include” with “must include” an entity known as the Western Australian School of Mines.

This clause also proposes two new subsections: subsection (2)(b) and subsection (3). The former acknowledges the possibility of University facilities at the Kalgoorlie Campus other than just the facilities of the School of Mines. The latter recognises that the School of Mines’ facilities or operations may not all be located at the Kalgoorlie Campus (some are at the Bentley Campus).

Clause 29: Section 21J amended

This clause amends **section 21J – Functions of Kalgoorlie Campus**.

Section 21J lists the functions of the Kalgoorlie Campus. This clause deletes section 21J(a), which lists functions related to the delivery by the University of technical and further education. As Curtin has relinquished control of the former VTEC, the function at 21J(a) is

spent.

Clause 30: Sections 21L and 21M replaced

This clause replaces **section 21L – Functions of Kalgoorlie Campus Council** – and **section 21 M – Membership of Kalgoorlie Campus Council**.

These two sections deal respectively with the functions and membership of the Kalgoorlie Campus Council (KCC). Clause 30 brings in revisions to these sections arising from the relinquishing of technical and further education functions, and consultations with stakeholders undertaken by the University regarding the KCC becoming an advisory body without management functions. The University has given an assurance that these amendments are acceptable to the local interest groups and current members of the KCC.

Clause 31: Sections 21O and 21P replaced

This clause replaces **section 21O – Chief executive officer** and **section 21P – Delegation by Kalgoorlie Campus Council**.

Section 21O provides for a Chief Executive Officer of the Kalgoorlie Campus. With the relinquishment of the technical and further education functions of the Kalgoorlie Campus this section is no longer required by the University.

This clause inserts **new section 21PA** which provides for, but does not require, remuneration (if any) and allowances (if any) for Kalgoorlie Campus Council members to be determined by the Salaries and Allowances Tribunal (c.f. clause 19 above).

Replacement section 21P – Delegation by Kalgoorlie Campus Council - adjusts the section to take account of other proposed amendments and provides that the Kalgoorlie Campus Council may authorise a delegate to sub-delegate, something not currently provided for. **New section 15(1)(b)**, proposed by clause 20 (above), makes provision for the Council of the University to delegate matters affecting the Kalgoorlie Campus to the Kalgoorlie Campus Council.

Clause 32: Part 1 Division 2C inserted

This clause, inserts after Part 1 Division 2B, the following headings and new sections 22A to 22M.

Division 2C – Leasing University land for commercial purposes
Subdivision 1 - Preliminary

New section 22A - Terms used

Sets out the definitions of 11 terms used in this new Division:
advance determination; approval; commercial arrangement;
commercial purpose; lease; limited company; participate; participate
in a commercial arrangement; payment agreement; University land;
and university development proposal.

New section 22B – Object of this Division

States that the object of this Division is to enable the University to seek and obtain the Minister's approval to lease University land, as defined in section 22A, for purposes that would not otherwise be authorised by the Act.

New section 22C – Effect of Division on University functions, powers and obligations

This new section has three subsections:

Subsection 22C(1)(a) provides that this Division does not limit sections 5 (Establishment of Curtin University) and 7 (Functions of the University) of this Act.

Subsection 22C(1)(b) provides that this Division does not limit any function, power, right, privilege, immunity or obligation of the University under (i) this University's Act or any other written law, or (ii) the principles and rules of common law and equity.

Subsection 22C(2) provides that nothing in the Division imposes any requirement on the University to seek or obtain the Minister's approval to lease any University land.

Subsection 22C(3) provides that nothing in this Division affects the obligation of the University under section 5(2)(ea) to obtain Minister's approval of leases of over 21 years duration.

Subdivision 2 – Power to lease University land for commercial purposes

New Section 22D – University may lease University land for commercial purposes with Ministerial approval

This section has five subsections:

Subsection 22D(1) provides that the University can, with the Minister's approval (a) enter into a transaction that has a commercial purpose or (b) participate in any commercial arrangement that has a commercial purpose.

Subsection 22D(2) provides that (a) and (b) of subsection (1) can be done directly or through a wholly-owned subsidiary.

Subsections 22D(3) and (4) provide respectively that subleases of a ministerially approved commercial lease can be granted without the need to seek further approvals, subject to any conditions attached to the approval.

Subsection 22D(5) provides that while a Ministerial approval (a) confers the power on the University to do the thing authorised by the approval, it does not (b) exempt the University or any other person from compliance with, or give authorisation to do or omit to do anything contrary to any other written law or any obligation of the University.

New section 22E – Effect of approval to lease University land

Section 22E(1) provides that land leased in accordance with an approval under section 22I is to be taken to be used for the purposes of the University or for purposes incidental to those purposes. The effect is that doubt is removed that land leased without such approval might be ‘beyond purpose’ and *ultra vires* the Act.

Section 22E(2) provides that section 33 of the *Land Tax Assessment Act 2002* overrides this section, meaning that the leased land is not exempt from land tax (see further clause 38 of this Bill, which replaces section 33 – Exemption from rate or tax).

New section 22F – Approval in principle of university development proposal

Proposed sections 22F to 22I set out a three-step procedure that the University may follow: approval in principle; advance determination of approval; and approval. While the third step – approval- is required, the first two steps are not. The first two steps are being made available at the request of the University to assist investor confidence during the early stages of preparation of a university development proposal (as defined in section 22A). The University may skip either or both of the first two steps.

Subsection 22F(1) provides that the University may apply for approval in principle of a development proposal.

Subsection 22F(2) provides that the application must describe what the University is seeking to have eventually approved, including (a) the details of the land to be leased and (b) the purpose for which the land is to be leased.

Subsection 22F(3) provides that if the University applies for approval in principle, (a) the application must be made in the required form; (b) the Minister may request further information; and (c) the Minister may grant or refuse the application.

Subsection 22F(4) provides that the Minister must (a) notify the decision in writing and (b) if the application is refused, notify the reasons for refusal.

New section 22G – Application for advance determination of approval

Subsection 22G(1) provides that the University may apply for a determination that, if an application is (later) made for an approval under section 22I, the approval will be granted.

Subsection 22G(2) provides that prior approval in principle is not required for the purpose of the section

Subsection 22G(3) sets out what the application for advance determination must cover: (a) details of the land to be leased; (b) the purpose for which the land is to be leased; and (c) the financial details of the proposal, including the amounts of the University’s investment, the proposed lessee’s investment, and that of any other

parties involved.

Subsection 22G(4) provides that if approval in principle was obtained, the application for advance determination must identify any material difference between the proposal approved in principle and the proposal being submitted for advance determination.

Subsection 22G(5) provides that an advance determination application (i) must be made in the correct manner and form; (ii) if required, be accompanied by a payment agreement (refer proposed section 22L); and (iii) the Minister may request additional information.

New Section 22H – Advance determination approval

This section provides that:

- (1) The Minister may grant or refuse the application.
- (2) The Minister must grant the application if:
 - a. Approval in principle was previously obtained; and
 - b. There is no material difference since then; and
 - c. The Minister is satisfied in relation to the proposal.
- (3) The Minister must notify the decision in writing and, if refused, give reasons for the refusal.
- (4) The Minister, in granting an advance determination, may specify a time after which it lapses.
- (5) The Minister may subsequently extend the time specified in subsection (4).

New section 22I - Approvals

This section provides that:

- (1) The University may apply to the Minister to enter into a commercial transaction or participate in any commercial arrangement that has a commercial purpose (refer to section 22A for definitions of terms).
- (2) The application for approval (i) must be made in the correct manner; and (ii) be accompanied by a payment agreement, if required; and (iii) may require additional information as requested by the Minister.
- (3) In order to apply for an approval, it is not necessary for the University to have applied for or obtained approval in principle or advance determination.
- (4) The Minister may grant or refuse to grant the approval.
- (5) However, the Minister must grant the approval if satisfied that:
 - a. An advance determination is in force; and
 - b. There is no material deviation from the application that was made for the advance determination.
- (6) A material deviation would be (a) the area of land to be leased has increased by 20% or more; and/or the amount of investment by the University has increased or decreased by 20% or more.

New section 22J – Notification of decision on application for approval

This section provides (1) that the Minister must notify the decision in writing and if the decision is to refuse to grant the application, the reasons for the refusal; and (2) the Minister may attach conditions to an approval and if so, they must be specified in the approval.

New section 22K – Alteration of approval

This section provides that the Minister:

- (1) May, at the request of the University, vary or revoke any conditions attached to an approval or attach new or additional conditions.
- (2) Cannot make changes to the terms of an approval unless the University agrees to the changes, but:
 - a. The Minister is not obliged to make any or all of the requested changes; and
 - b. The Minister may propose variations, alternatives or additions to the changes requested by the University; and
 - c. The Minister may refuse to change the terms of an approval unless the University agrees to variations, alternatives or additions proposed by the Minister.

New section 22L – Payment agreements

This section provides that the Minister may enter into a written agreement with the University to cover reasonable costs and expenses incurred by the Minister in considering applications under this Division for advance determination and approval.

Subsection 3 provides for the making of regulations by the Governor that would set out the parameters of a payment agreement.

A payment agreement is not a requirement under the section; it is an option available to the Minister when considering complex applications, which are expected to be the exception rather than the rule.

New section 22M – Minister may delegate functions under this Division

This section enables the Minister to delegate, in writing, to the chief executive officer of the Department principally assisting the Minister in the administration of this Act any or all of the Minister's functions under this Division.

Please note that clauses 33 to 35 below **are amendments to existing Part 1 Division 3 – Financial provisions**

Clause 33: Section 23 amended

This clause amends **section 23 – Funds of the University**.

Section 23 – Funds of the University – is amended by **subclause**

33(1) by the insertion in section 23(1) a new subsection (ca) that provides that moneys received through approved commercial leasing approved under new section 22I are funds available to the Council for the purpose of enabling it to exercise its powers, authorities, duties and functions under the Act.

Subclause 33(2) deletes an outmoded requirement for the Treasurer to approve the University's establishment of bank account/s.

Subclause 33(3) deletes "of Technology" in the current name of the University.

Subclause 33(5) deletes the outmoded requirement at section 23(4), which requires Treasurer's approval for the University to expend moneys from the University's accounts on the provision of residential accommodation for staff and students (refer section 17A).

Subclause 33(4) consequentially amends section 23(3) by deleting reference to subsection (4) in accordance with the proposed deletion of that subsection by subclause 33(5).

Clause 34: Section 24 replaced

This clause replaces **section 24 – Power of University to borrow** with a new section which broadens the power beyond borrowing to include other ways of raising money.

New section 24 – Borrowing and other ways of raising money – has four subsections:

Subsection 24(1) defines the meaning of "debt paper" for the purpose of the section.

Subsection 24(2) provides that the University may do all or any of: borrow money; obtain credit; issue, acquire, hold or dispose of debt paper; create and issue capital instruments; arrange for financial accommodation to be extended to the University.

Subsection 24(3) provides that capital instruments created and issued by the University (a) may be described in any way determined by the University and (b) are to be created and issued on whatever terms the University determines.

Subsection 24(4) requires the University to keep whatever registers for the purposes of this section as are prescribed by regulations made under this Act.

New section 25A – Notice of borrowing

Subsection 25A(1) requires the University, if it intends to borrow money **AND** seek a guarantee under section 25B for that borrowing, to (a) give the Minister reasonable notice of that intention and (b) notify the Minister of the outcome.

Subsection 25A(2) provides that a liability of the University is not unenforceable or in any way affected if the University does not comply with subsection (1) of this section.

New section 25B – Guarantees

Subsection 25B(1) provides that the Treasurer may, on the Minister's recommendation, guarantee the performance by the University of any financial obligation of the University.

Subsections 25B(2) and (3) set out certain requirements that must be observed in the drawing up of the terms of a guarantee.

Subsection 25B(4) provides that payments made by the Treasurer under a guarantee (if one is provided) are appropriated from the Consolidated Account (this provision makes this Bill a "money Bill", needing to be introduced in the Legislative Assembly).

Subsection 25B(5) provides that moneys received or recovered from the University under the terms of a guarantee are to be credited to the Consolidated Account.

New section 25C – Charges for guarantee

Subsection 25C(1) provides that the Treasurer may, after consultation with the University, fix charges to be paid by the University in respect of a guarantee, if one has been granted under section 25B.

Subsection 25C(2) provides that charges are (a) to be made in instalments at times determined by the Treasurer and (b) be credited to the Consolidated Account.

Clause 35: Section 25 amended

This clause amends **section 25 – Power of the University to invest certain moneys** by deleting "of Technology" from the name of the University

Please note that clauses 36 to 38 **amend sections of Division 4 – Miscellaneous provisions**

Clause 36: Section 27 amended

This clause amends **section 27 – Governor to be Visitor** – by deleting subsection (1) and inserting instead "(1) The governor is the Visitor of the University, and has the functions that Visitors usually have".

The Bill proposes that this same wording for the functions of the Visitor be inserted in each of the other three public university Acts. It is regarded as a direct and contemporary statement of the role of the Visitor for any Australian university.

Clause 37: Section 28 deleted

This clause deletes **section 28 – Prohibition of religious tests**. The section bars the administration of any religious test to entitle a person to be admitted to or graduate from the University or to hold office in the University. This section is judged to be not now needed in light of the *Equal Opportunity Act 1984* sections 18 and 61.

Clause 38: Section 33 replaced

This clause replaces **section 33 – Exemption from rate or tax** – to

correspond with the proposed provision at new section 22E(2).

Subsection 33(1) remains unchanged.

Subsection 33(2) is amended to provide at paragraph (2)(b) that University property leased for a commercial purpose (as defined in section 22A) is not exempt from rates.

Subsection 33(3) is inserted and refers to section 33 of the *Land Tax Assessment Act 2002* for the requirements that University land use must satisfy for an exemption from land tax.

New section 34A – Regulations

This clause inserts a **new section 24A – Regulations** to provide a regulation-making power for the Governor, on the recommendation of the Minister, to make regulations, necessary or convenient, under the Act. Subsection (2) of the section requires the Minister to consult with the University Council before making any recommendation to the Governor. Regulations are required under new section 22L – Payment agreements – and may be required under new section 24(4), the keeping of registers in relation to borrowing and other ways of raising money.

Clause 39: Section 34 amended

This clause amends **section 34 – Power to make Statutes** which is the power the University has to make Statutes (subsidiary legislation similar to regulations) with respect to all matters pertaining to the University and in particular, under the current provisions, with respect to matters set out in subsections (1), (1a), (1b), (1c), (1d) and (1e) of the section.

Subclause (1)(a) deletes 34(1)(d) and replaces it with “(d) the staff of the University” in accord with now redundant references to branches and the Kalgoorlie Campus.

Subclause (1)(b) deletes 34(1)(ea) which refers to Boards established under Part 1 Division 2A which is deleted by clause 26 of this Bill.

Subclause (1)(c) inserts two new paragraphs to 34(1) – (ja) and (jb) – which are needed for the amendments proposed by this Bill to sections 45 and 46 (amenities and services fee).

Subclause (1)(d) deletes paragraphs (l) and (m) of the section and inserts instead paragraphs (la), (li) and (lm) which relate to residential accommodation for staff and enrolled students. The head power is the formulation of section 17A proposed by clause 22. The new paragraphs modernise the references to accommodation by discontinuing references to ‘hostels’, ‘halls of residence’, and ‘boarding houses’ in favour of the generic term, ‘residential accommodation’.

Subclause 40(2) amends paragraph (b) of section 34(1c) by raising the maximum penalty for any one prescribed disciplinary offence from \$500 to \$1 000.

Subclause 39(3) makes four amendments to section 34(1d):

- a. Replaces reference to ‘chief executive officer of the University’ with “vice-Chancellor” (see replacement section 14 proposed by clause 20).
- b. Deletes “by-law or” because Division 5 deals with Statutes and rules made under Statutes (by-laws are made and dealt with under section 20A).
- c. Provides gender neutral language.
- d. Provides gender neutral language.

Subclauses 39(4), (5) and (6) delete references to “by-law or” for the reason above.

Clause 40: Section 35 replaced

This clause replaces **section 35 – Statutes to be approved by Governor, published and tabled** – with a scheme that has the same effect.

Replacement section 35 still requires University Statutes to be approved by the Governor and published in the *Gazette* before they can take effect. Once gazetted a Statute will still have to be laid before each House of Parliament as is currently required under section 35(2) for possible disallowance under section 34(3). Under the replacement section, however, the tabling and disallowance provisions are deleted from the University Act and instead a provision is inserted to the effect that a Statute, once gazetted, is subject to the provisions of section 42 of the *Interpretation Act 1984*, as if the Statute were a regulation. Subsection (3) sets out what constitutes evidence of a Statute in court proceedings.

New section 36A – Statutes to be made readily available to public- requires the Council to ensure that all its Statutes (ones made after commencement of replacement section 35(1) and those in force immediately before commencement) are readily available to the public by whatever means the Council considers appropriate. Subsection (2) of the section provides that publication in the *Gazette* is not sufficient compliance with the requirement for ready availability. Subsection (3) provides that subsection (1) ceases to apply when a Statute ceases to have effect; that is the spent Statute would be withdrawn from publication.

Clause 41: Part II heading replaced

Under this clause the heading, **Part II – Student Guild**, is deleted and replaced by **Part 3 – Student Guild**.

Clause 42: Section 45 replaced

This clause deletes and replaces **section 45 – Amenities and services fee**.

Replacement section 45 – Amenities and services fee – provides that a Statute may be made to provide for an annual amenities and services fee and (without limitation) the Statute may prescribe or provide for the matters set out in subsections (1)(a) to (1)(f). It has been requested by the universities because it will enable them to respond to any commonwealth requirements that conflict with the

requirements of the current section, such as a decision by a Federal Government to bar the charging of the fee. The replacement section enables the universities to adapt without the need to seek amendments to their Acts or to devise 'work-around' arrangements that might not be valid. In 2011 the Gillard Labor Government brought in the *Higher Education Legislation Amendment (Student Services and Amenities) Act* (Cth). The WA universities have found it difficult to comply simultaneously with the provisions of the State Acts and the Commonwealth Act. The specificity of the Commonwealth's requirements about permissible usage of the funds sits uneasily with the State Acts which are not specific about purposes, referring only to Senates/Councils prescribing by Statute the processes for determining the "broad categories" of allowable Guild expenditure and for resolving disputes between the Senates/Councils and the Guilds in relation to that determination. The Commonwealth legislation does not contemplate "broad categories" of allowable expenditure; it is very specific on this matter. Student consultation is required under both the State and the Commonwealth legislation, but under the former it is aimed at determining the 'broad categories', and under the latter it is aimed at determining priorities among specific allowable services. There are no penalties in the State Acts for non-compliance with the provisions, but there are in the Commonwealth's legislation. This new section makes it easier for the University to deal with any dual compliance difficulties. Subsection (2A) requires the Council to pay to the Student Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

Clause 43: Section 46 amended

Current section 46 – Council to include detail in Statute – sets out certain requirements that must be defined by Statute. Paragraph (a) of subsection (1) requires the Statute to define the broad areas of amenities and services to which the Student Guild may apply the fees paid to it and paragraph (b) requires the Statute to define "processes for resolving disputes that might arise in the course of defining those areas"

Subclause (1) of this clause deletes section 46 paragraph (b) and replaces it with "the processes for determining those areas" [to which the Guild may apply the fees].

Subclause (2) of this clause deletes subsection (3) of the section, which requires the prescription by Statute of the process for reaching agreement on how fees not paid to the Guild are to be spent.

Sections 45 and 46 need to be read in conjunction with the requirements of section 19.43 of the Commonwealth's *Higher Education Support Act 2003*, subsection (4) of which specifies 19 permissible services upon which the fee may be expended. This Commonwealth requirement circumscribes the University's and Guild's discretion under section 46 of the State Act, leaving little, if any room for dispute between the University Council and the

Student Guild.

Clause 44: Part 4 inserted

This clause inserts after section 46:

**Part 4 – Transitional provisions for Universities Legislation
Amendment Act 2016**

New section 47 – Terms used – defines “commencement day” and “former name” for the purpose of Part 4.

New section 48 – Transitional provisions (change of name) – provides for the transition of the change of name of the University from “Curtin University of Technology” to “Curtin University”.

New section 49 – Transitional provisions (Council) provides for the transition from the membership of the Council prior to commencement day to that proposed in clause 12.

New section 50 – Transitional provisions (Kalgoorlie Campus Council) provides for the transition of the membership of the Kalgoorlie Campus Council prior to commencement day.

New section 51 – Transitional provisions (Vice-Chancellor) transitions the title “chief executive officer” under the Act to the title “Vice-Chancellor”.

New section 52 – Transitional provisions (guarantees) provides that a Treasurer’s guarantee on any University borrowing in force before commencement day continues.

New section 53 – Transitional provisions (Statutes) has provisions to handle the transition from the tabling and disallowance provisions of current section 35 to amended section 35.

Clause 45: **Schedule 1A clause 5 deleted**

This clause deletes **Schedule 1A clause 5 – Quorum where clause 3 applies** – which determines the quorum of a Council meeting considering a matter if by Schedule 1A clause (3) a member is disqualified in relation to the matter. While the deleted provision enabled a smaller quorum in the circumstances, the University takes the more conservative view that the ordinary quorum provision (section 13 of the Curtin Act) should be used even where there are conflicting interests.

Clause 46: **Schedule 1A clause 6 amended**

This clause amends **Schedule 1A clause 6 – Minister may declare clauses 3 and 5 inapplicable** - by deleting reference in subclause (1) to clause 5 which is deleted by clause 45 of the Bill above.

Clause 47: **Schedule 2 clauses 2 to 4 replaced**

Schedule 2 deals with provisions as to the constitution and proceedings of the Kalgoorlie Campus Council. This clause deletes and replaces the clauses governing terms of office; casual vacancies and vacation of office in accordance with the provisions proposed by clauses 30 and 31 of this Bill.

Please note that clauses 48 to 89 **amend the *Edith Cowan University Act 1984***

Part 3 – *Edith Cowan University Act 1984* amended

Clause 48: Act amended

This part amends the Edith Cowan University Act 1984.

Clause 49: Long title amended

“the” is deleted from the long title, which is “An Act to establish and incorporate the Edith Cowan University and for incidental and other purposes”.

Clause 50: Section 3 amended

This clause amends **section 3 – Interpretation**.

Subclause (1) of this clause deletes the definitions of “Board of the Academy” and “chief executive officer” in anticipation of the effect of new definitions to be inserted by subclause (2) of this clause.

Subclause (2) inserts definitions for: Advisory Board; casual vacancy; Deputy Chancellor; residential accommodation; and Vice-Chancellor.

Subclause (3) deletes “the chief executive officer” from the definition of “member of staff” in section 3(1) and inserts instead “the Vice-Chancellor”.

Subclause (4) deletes “by-law or” from the definition of “prescribed” in section 3(1), so that the definition now reads “... by a Statute or by a ~~by-law or~~ rule made under a Statute.

Subclause (5) deletes “the” in the definition of “University” [... means the Edith Cowan University ...] and inserts a semi colon instead of a comma at the end of the definition.

Clause 51: Part II heading amended

The Part II heading will now be Part II – Edith Cowan University – not Part II – The Edith Cowan University.

Clause 52: Section 4 amended

This clause amends **section 4 – Establishment**.

Subclauses (1) and (2) of this clause amend sections 4(1) and 4(2) respectively to convert references to “the Edith Cowan University” to “Edith Cowan University”.

Subclause (3) corrects a previous drafting omission by inserting “or” at the end of paragraph (a) of section 4(2).

Clause 53: Section 5 amended

This clause amends **section 5 – Constitution and powers**.

Subclause (1)(a) of this clause makes the Minister responsible for approving leases instead of the Governor.

Subclause (1)(b) enables the University to enter into business arrangements.

These two amendments are the same as amendments inserted in the Curtin Act by clause 9(2) of this Bill.

Subclause (1)(c) inserts, by current drafting convention, “and” after each of paragraphs (a) to (e) in section 5(2).

Clause 54: Section 7 replaced

This clause replaces **section 7 – Functions of the University** – with a combination of contemporary rewording of existing functions and the addition of some new functions. Proposed subsections (a) to (d) and (g) to (j) are contemporary statements of the University’s core functions: teaching, research and community engagement. Proposed subsections (e) and (f) are new functions which remove doubt as to whether the University may use its assets commercially and to generate revenue for the purpose of funding and carrying out its core functions. This proposed list of functions closely resembles the list of Curtin University’s functions as amended by clause 10 of this Bill. This clause also inserts sections 7(2) and 7(3) the wording of which closely resembles existing sections 7(2) and (3) of the Curtin Act.

Clause 55: Section 9 amended

This clause amends **Section 9 – Constitution of the Council** which sets out the membership of the Council (subsection (1)); a provision related to the validity of the proceedings of the first meeting of Council after the commencement date (subsection 2) and certain eligibility criteria for membership of Council (subsections (3) to (6)).

Subclause (1) of this clause deletes subsection (1) - the current provisions for the size and composition of the Edith Cowan University Council - and inserts new provisions (a) to (i). The maximum size is 17 members instead of 21. Governor’s appointees are reduced from 6 to 3, the Chairperson of Academic Board is added, the nominee of the Minister for Education is deleted, the Vice-Chancellor is retained ex officio, there is 1 elected academic staff member instead of 2, the 1 elected salaried officer is retained, 2 elected students are retained, 2 elected Alumni are retained, a maximum of 5 co-opted members is retained, as well as the Chancellor.

Proposed section 9(2) provides that a person who holds an elective office is not disqualified from becoming a member of the Council.

Subclause (2) of this clause amends section 9(3) to make members of staff of the University and enrolled students ineligible to be appointed by the Governor (proposed section 9(1)(a) or by co-option by the Council (proposed section 9(1)(h)).

Subclause (3) of this clause amends section 9(4) to make full-time, part-time or casual employees of the University ineligible to be appointed as enrolled students under proposed section 9(1)(f).

Subclause (4) of this clause amends section 9(5) to makes full-time, part-time and casual staff and enrolled students ineligible to be members of Council as elected Alumni.

Clause 56: Section 10 replaced

This clause replaces section 10 – Term of Office.

New **section 9A - Nominations Committee** – is inserted.

New section 9A is a provision that requires the Council to establish and maintain a committee called the Nominations Committee.

Subsection (2) sets 6 as the maximum membership of the Committee.

Subsection (3) makes staff, and student members of the Council ineligible to minimise the possibility of conflicts of interest.

Subsection (4) sets the functions of the Nominations Committee to be to maintain lists of persons who are eligible and willing to be appointed to any Council and Advisory Board vacancy or casual vacancy, and to recommend relevantly to the Minister or the Council suitable candidates for appointment.

Subsection (5) provides that the fact that the Nominations Committee has not recommended a person for appointment under section 9(1) does not prevent the person from being appointed under that section.

Replacement section 10 sets out the terms of office of Council members. Generally, members, other than the elected student members, are to be given terms of 3 years, although subsections (4) and (5) do allow for shorter terms where it is desirable for one or other of the reasons at subsection 4(a) and 4(b). Student members have 1-year terms. Members, other than student members, may serve a maximum of 3 successive terms. Student members may serve a maximum of 2 successive terms. The Vice-Chancellor is an *ex officio* member of the Council.

Clause 57: Section 11 replaced

This clause replaces **section 11 – Vacation of office** with a contemporary list, gender neutral, of matters (a) to (i), ranging from resignation to death that would make the office of a Council member vacant.

Clause 58: Section 11A amended

This clause makes a minor correction to **section 11A – Removal of members for breach of certain duties and suspension pending removal** - in keeping with current drafting conventions to replace in subsection (3) a fraction expressed as a number (“2/3”) with the fraction expressed instead in words (“two-thirds”).

Clause 59: Section 11B inserted

This clause inserts **new section 11B – Casual vacancies** – which provides that casual vacancies are to be filled in the same way as if the member’s term had expired.

Clause 60: Section 12 amended

This clause makes two minor amendments to **section 12 – Chancellor and meetings of Council**.

Subclause (1) replaces two references to “Pro-Chancellor” in section 12(b) with “Deputy Chancellor”, the preferred title for the position.

Subclause (2) replaces the reference to “4 members” in section 12(6) with “3 members”. The context is the minimum number of Council members needed to request the Chancellor, in writing, to convene a meeting of Council. The reduction from 4 to 3 is consistent with the smaller Council proposed by clause 55.

Clause 61: Section 15A inserted

This clause inserts new **section 15A – Remuneration and allowances for Council members**.

Provides for remuneration (if any) and allowances (if any) of members of Council, to be determined by the Salaries and Allowances Tribunal. Clauses 191 to 193 of this Bill consequentially amend the *Salaries and Allowances Act 1975* accordingly. This new section is being inserted to remove doubt as to the University’s legal capacity to do so.

Clause 62: Section 15 amended

This clause amends **section 15 – Delegation by Council**.

Adjusts section 15 to enable the Council to authorise a delegate, under section 15(1) to sub-delegate, something not currently permitted under the section but which is needed by the Vice-Chancellor in many matters.

Clause 63: Section 17 amended

This clause amends **section 17 – Powers of Council**.

Subclause 1(a) deletes “university” in paragraph (c) of section 17(1), which has it that the Council ‘may provide courses of study appropriate to a university on a full-time or part-time basis etc’ and inserts instead “university, or other tertiary courses”. This amendment was sought by the University to remove any doubt as to its power to provide not only higher education courses, but also VET courses (e.g. diplomas) at, for example, its prestigious Western Australian Academy of Performing Arts.

Subclause 1(b) inserts new paragraph (fa) to remove any doubt that the Council has the power to provide residential accommodation for members of staff, or enrolled students, or both. This paragraph has the same effect as clause 21 of this Bill has for the Curtin Act.

Subclause 2 inserts “and” after each of paragraphs (a) to (d) in accord with a current drafting convention.

Clause 64 Section 20 amended

This clause amends **section 20 – ECU South West Campus (Bunbury) Advisory Board**. Specifically, the clause deletes sections 20(2) and (3) and replaces them.

Currently, subsection (2) provides that the following may be prescribed by Statute: the constitution of the Advisory Board; the number of members of the Board and the method of their appointment and selection; terms of office; conduct of proceedings; and all other matters necessary or desirable for the exercise of Board’s functions. Subsection (3) of section 20 says that the

Advisory Board's functions are the control and management of the affairs and concerns of the ECU's Bunbury Campus and the University's property at the Bunbury Campus.

This clause inserts **new subsection (2)** which enables the Council to make Statutes prescribing the appointment and terms of office of members of the Advisory Board, and providing for meetings of the Board and any other matters necessary or desirable to ensure the effective exercise of the Board's functions.

This clause also inserts a **new subsection (3)** which states the functions of the Advisory Board are to (a) provide the University Council with strategic advice in relation to the Bunbury Campus and education matters relevant to the south-west region; and (b) any other relevant functions determined by the Council.

The University advises that members of the current Board and other interested parties have been consulted about and are accepting of these amendments.

Clause 65: Section 24 amended

This clause amends **section 24 – Western Australian Academy of Performing Arts** - by deleting section 24(2) and (3) and inserting instead 24(2) "The Council may make Statutes providing for the control and management of the affairs and concerns of the Academy".

Clause 66: Sections 25 and 26A inserted

Proposed **new section 25 – Advisory Board of Academy** – provides (1) that there is to be an Advisory Board of the Academy and (2) that without limiting new section 24(2) inserted by clause 65, the Council may make Statutes prescribing the appointment and terms of office of members of the Advisory Board, and providing for meetings of the Board and any other matters necessary or desirable to ensure the effective exercise of the Board's functions.

Subsection (3) of new section 25 states the functions of the Advisory Board are to (a) provide the University Council with strategic advice in relation to the Academy; and (b) any other functions relating to the Academy determined by the Council.

Subsection (4) of new section 25 is identical to subsection (3) of current section 24.

Proposed **new section 26A – remuneration and allowances for Advisory Board members** - provides for, but does not require, remuneration and allowances for members of the Advisory Boards of the ECU South West Campus Bunbury and the Academy to be determined by the Salaries and Allowances Tribunal (c.f. clause 31 of this Bill which makes the same provision for Curtin's Kalgoorlie Campus Council members).

Clause 67: Section 26 amended

This clause amends **section 26 – Power to make Statutes**.

Subclause (1)(a) inserts two new paragraphs, (ja) and (jb) enabling to make the Council to make the Statutes required under the amendments respectively to sections 41A and 41B as amended by clauses 79 and 80 of this Bill (related to amenities and services fee).

Subclause (1)(b) deletes paragraphs (l) and (m) of the section and inserts instead paragraphs (l), (m) and (na) which relate to residential accommodation for staff and enrolled students. The head power is the proposed formulation of section 17(1)(fa) by clause 63(1)(b). See also the definition of “residential accommodation” proposed by clause 50(2). The new paragraphs modernise the references to accommodation by discontinuing references to ‘hostels’, ‘halls of residence’, and ‘boarding houses’ in favour of a generic reference to ‘residential accommodation’.

Subclause (2)(a) amends paragraph (b) of section 26(3) to raise the maximum penalty for any one prescribed disciplinary offence from \$250 to \$1 000.

Subclause (2)(b) amends paragraph (d) of section 26(3) to raise the maximum amount of restitution to the University for loss, damage or destruction of university property arising out of a disciplinary offence from \$500 to \$1 000.

Subclause (3) deletes section 26(4) and replaces that subsection with a new subsection (4) which refers to the Vice-Chancellor (not the chief executive officer) and his/her ability to delegate three powers that are already in the current section. Essentially, the replacement subsection is rephrasing of the current section, in accord with current drafting conventions.

Subclauses (4) to (6) delete references to “by-law or” in three subsections of the section as the University’s subsidiary legislation made under this section consists only of Statutes and rules made under Statutes (by-laws applicable to lands are made under section 29).

Subclause (7) inserts “and” after each of the named subsections in accordance with current drafting convention.

Clause 68: Section 27 replaced

This clause replaces **section 35 – Statutes to be approved by the Governor and published and may be revoked by Parliament** – with a scheme that has the same effect.

Replacement section 27 – Approval, publication, disallowance and proof of Statutes - still requires University Statutes to be approved by the Governor and published in the *Gazette* before they can take effect. Once gazetted a Statute will still have to be laid before each House of Parliament as is currently required under section 27(2) for possible disallowance under section 27(3). Under the replacement section, however, the tabling and disallowance provisions are deleted from the University Act and instead a provision is inserted to the effect that a Statute, once gazetted, is subject to the provisions of section 42 of the *Interpretation Act 1984*, as if the Statute were a regulation. Subsection (3) sets out what

constitutes evidence of a Statute in court proceedings.

New section 28A – Statutes to be made readily available to public- requires the Council to ensure that all its Statutes (ones made after commencement of replacement section 27(1) and those in force immediately before commencement) are readily available to the public by whatever means the Council considers appropriate. Subsection (2) of the section provides that publication in the Gazette is not sufficient compliance with the requirement for ready availability. Subsection (3) provides that subsection (1) ceases to apply when a Statute ceases to have effect; that is the spent Statute would be withdrawn from publication.

Clause 69: Part IV Division heading inserted

This clause amends the heading to **Part IV – University land** – by adding:

Division 1 – Vesting of land in University and by-laws applicable to University lands

Clause 70: This clause amends section 28 – Land may be vested in the University.

Subclause (1) inserts “care” before management in the second line of subsection (1) for consistency with the language of section 46 of the *Land Administration Act 1997*.

Subclause (2) deletes and replaces subsections 28(3) and (4). New subsection (3) modernises the language of the deleted section, without altering its effect, and is consistent with existing section 20(2) of the Curtin Act. New subsection (4) is inserted consequential to section 17(1)(fa) as proposed by clause 63(1)(b). The wording of the subsection closely resembles proposed section 17A(2) of the Curtin Act.

Clause 71: This clause amends section 29 – Power to make by-laws applicable to lands.

Subclause 71(1) inserts, before section 29(1), three new subsections (1A), (1B), and (1C) which together are a contemporary statement of the intended effect of subsection (4), which is deleted by subclause (4) of this clause.

Subclause (2) deletes section 29(2)(a) and inserts instead a rephrasing of the section to include land ‘held by’ and ‘leased to’ to accommodate the University’s request that the power to make by-laws extends to land held by the University other than through the vesting provisions of this Act (e.g. freehold land acquired from third parties).

Subclause (3) in section 29(3):

- a. substitutes “police officer” for “member of the Police Force” in paragraph (d)
- b. introduces gender neutral language to paragraph (k)
- c. introduces gender neutral language to paragraph (l)
- d. substitutes “police officer” for “member of the Police Force” in

- paragraph (m)
- e. introduces gender neutral language to paragraph (n)
- f. substitutes “police officer” for “member of the Police Force” in paragraph (n).

Subclause (4) deletes section 29(4) – see also clause note for clause 71(1) above.

Subclause (5) deletes section 29(6) and inserts instead a new subsection (6) which (a) increases the maximum penalty for a breach of a by-law from \$250 to \$1 000; and (b) enables proceedings for the breach to now be taken by an ‘authorised person in the name of the authorised person’ (refer to definition of “authorised person” inserted by clause 71(1) above).

Subclause (6) deletes “Statutes and by-laws” in section 29(9) and inserts instead “Statutes”, because there are no disciplinary by-laws, only disciplinary Statutes and rules (see section 26(3)).

Subclause (7) inserts a new subsection (10) which says that by-laws made under section 29 apply to all leased University land, except if a lease expressly precludes it.

Subclause (8) inserts “and” after each of paragraphs (a) to (m) in accordance with current drafting conventions.

Clause 72: Part 1 Division 2C inserted

After Part 1 Division 2B the following headings and new sections 30A to 30M are inserted:

Division 2C – Leasing University land for commercial purposes **Subdivision 1 - Preliminary**

New section 30A - Terms used

Sets out the definitions of 11 terms used in this new Division: advance determination; approval; commercial arrangement; commercial purpose; lease; limited company; participate; participate in a commercial arrangement; payment agreement; University land; and university development proposal.

New section 30B – Object of this Division

States that the object is to enable the University to seek and obtain the Minister’s approval to lease University land, as defined in section 22A, for purposes that would not otherwise be authorised by the Act.

New section 30C – Effect of Division on University functions, powers and obligations

This new section has three subsections:

Subsection 30C(1)(a) provides that this Division does not limit sections 5 and 7 of this Act.

Subsection 30C(1)(b) provides that this Division does not limit any function, power, right, privilege, immunity or obligation of the University under (i) this University’s Act or any other written law, or (ii) the principles and rules of common law and equity.

Subsection 30C(2) provides that nothing in the Division imposes and requirement on the University to seek or obtain the Minister's approval to lease any University land.

Subsection 22C(3) provides that nothing in this Division affects the obligation of the University under section 5(2)(ea) to obtain Minister's approval of leases of over 21 years duration.

Subdivision 2 – Power to lease University land for commercial purposes

New Section 30D – University may lease University land for commercial purposes with Ministerial approval

This section has five subsections:

Subsection 30D(1) provides that the University can, with the Minister's approval (a) enter into a transaction that has a commercial purpose or (b) participate in any commercial arrangement that has a commercial purpose.

Subsection 30D(2) provides that (a) and (b) of subsection (1) can be done directly or through a wholly-owned subsidiary.

Subsections 30D(3) and (4) provide respectively that subleases of a ministerially approved commercial lease can be granted without the need to seek further approvals, subject to any conditions attached to the approval.

Subsection 30D(5) provides that while a Ministerial approval (a) confers the power on the University to do the thing authorised by the approval, it does not (b) exempt the University or any other person from compliance with, or give authorisation to do or omit to do anything contrary to any other written law or any obligation of the University.

New section 30E – Effect of approval to lease University land

Subsection 30E(1) provides that land leased in accordance with an approval under section 30I is to be taken to be used for the purposes of the University or for purposes incidental to those purposes. The effect is that doubt is removed that land leased without such approval might be seen as 'beyond purpose'.

Subsection 30E(2) provides that section 33 of the *Land Tax Assessment Act 2002* overrides this proposed section, meaning that the leased land is not exempt from land tax (see further clause 82 of this Bill, which deletes and replaces section 43 – Exemption from rate or tax).

New section 30F – Approval in principle of university development proposal

Proposed sections 30F to 30I set out a three-step procedure that the University may follow: approval in principle; advance determination of approval; and approval. While the third step – approval - is required, the first two steps are not. The first two steps are available

to assist investor confidence during the early stages of preparation of a university development proposal (as defined in section 30A). The University may skip either or both of the first two steps.

Subsection 30F(1) provides that the University may apply for approval in principle of a development proposal

Subsection 30F(2) provides that the application must describe what the University is seeking to have eventually approved, including (a) the details of the land to be leased and (b) the purpose for which the land is to be leased.

Subsection 30F(3) provides that if the University applies for approval in principle, (a) the application must be made in the required form; (b) the Minister may request further information; and (c) the Minister may grant or refuse the application.

Subsection 30F(4) provides that the Minister must (a) notify the decision in writing and (b) if the application is refused, notify the reasons for refusal.

New section 30G – Application for advance determination of approval

Subsection 30G(1) provides that the University may apply for a determination that, if an application is (later) made for an approval under section 30I, the approval will be granted.

Subsection 30G(2) provides that prior approval in principle is not required for the purpose of the section.

Subsection 30G(3) sets out what the application for advance determination must cover: (a) details of the land to be leased; (b) the purpose for which the land is to be leased; and (c) the financial details of the proposal, including the amounts of the University's investment, the proposed lessee's investment, and that of any other parties involved.

Subsection 30G(4) provides that if approval in principle was obtained, the application for advance determination must identify any material difference between the proposal approved in principle and the proposal being submitted for advance determination.

Subsection 30G(5) provides that an advance determination application (i) must be made in the correct manner and form; (ii) if required, be accompanied by a payment agreement (refer proposed section 30L); and (iii) the Minister may request additional information.

New Section 30H – Advance determination of approval

This section provides that:

- (1) The Minister may grant or refuse the application for advance determination
- (2) The Minister must grant the application if:
 - a. Approval in principle was previously obtained; and
 - b. There is no material difference since then; and

- c. The Minister is satisfied in relation to the proposal
- (3) The Minister must notify the decision in writing and, if refused, give reasons for the refusal
- (4) The Minister, in granting an advance determination, may specify a time after which it lapses
- (5) The Minister may subsequently extend the time specified in subsection (4).

New section 30I - Approvals

This section provides that:

- (1) The University may apply to the Minister to enter into a commercial transaction or participate in any commercial arrangement that has a commercial purpose (refer to section 30A for definitions of terms)
- (2) The application for approval (i) must be made in the correct manner; and (ii) be accompanied by a payment agreement, if required; and (iii) may require additional information as requested by the Minister
- (3) In order to apply for an approval, it is not necessary for the University to have applied for or obtained approval in principle or advance determination
- (4) The Minister may grant or refuse to grant the approval
- (5) However, the Minister must grant the approval if satisfied that:
 - a. An advance determination is in force; and
 - b. There is no material deviation from the application that was made for the advance determination
- (6) A material deviation would be (a) the area of land to be leased has increased by 20% or more; and/or the amount of investment by the University has increased or decreased by 20% or more.

New section 30J – Notification of decision on application for approval

This section provides (1) that the Minister must notify the decision in writing and if the decision is to refuse to grant the application, the reasons for the refusal; and (2) the Minister may attach conditions to an approval and if so, they must be specified in the approval.

New section 30K – Alteration of approval

This section provides that the Minister:

- (1) May, at the request of the University, vary or revoke any conditions attached to an approval or attach new or additional conditions
- (2) Cannot make changes to the terms of an approval unless the University agrees to the changes, but:
 - a. The Minister is not obliged to make any or all of the requested changes; and
 - b. The Minister may propose variations, alternatives or additions to the changes requested by the University;

- and
- c. The Minister may refuse to change the terms of an approval unless the University agrees to variations, alternatives or additions proposed by the Minister.

New section 30L – Payment agreements

This section provides that the Minister may enter into a written agreement with the University to cover reasonable costs and expenses incurred by the Minister in considering applications under this Division for advance determination and approval.

Subsection 3 provides for the making of regulations by the Governor that would set out the parameters of a payment agreement.

A payment agreement is not a requirement under the section; it is an option available to the Minister when considering complex applications, which are expected to be the exception rather than the rule.

New section 30M – Minister may delegate functions under this Division

This section enables the Minister to delegate, in writing, to the chief executive officer of the Department principally assisting the Minister in the administration of this Act any or all of the Minister's functions under this Division.

Clause 73: Section 30 replaced

Section 30 – Chief Executive Officer – is deleted and replaced by **new section 30 – Vice-Chancellor** – which modernises the language of current section 30. References are to Vice-Chancellor rather than chief executive officer and enable the Vice-Chancellor to use other titles, e.g. President, where it is appropriate to do so.

Clause 74: Section 31 amended

This clause amends **section 31 – Academic and other staff** – to modernise the way reference is made to conditions of employment of staff.

Please note that clauses 75 to 77 below are **amendments to existing Part 1 Division 3 – Financial provisions**

Clause 75: Section 36 amended

This clause amends **section 36 – Funds of the University**.

Subclause (1) of this clause inserts new subsection (ca) in section 36 that provides that moneys received through approved commercial leasing approved under new section 30I are funds available to the Council for the purpose of enabling it to exercise its powers, authorities, duties and functions under the Act.

Subclause (2) deletes an outmoded requirement for the Treasurer to approve the University's establishment of bank account/s.

Subclause (3) inserts "and" after each of paragraphs (a) and (b) in

section 36(1).

Clause 76: Section 37 replaced

Existing **section 37 – Power to borrow** – is replaced by this clause, which broadens the powers beyond borrowing to include other ways of raising money.

New section 37 – Borrowing and other ways of raising money – has four subsections:

Subsection 37(1) defines the meaning of “debt paper” for the purpose of the section.

Subsection 37(2) provides that the University may do all or any of: borrow money; obtain credit; issue, acquire, hold or dispose of debt paper; create and issue capital instruments; arrange for financial accommodation to be extended to the University.

Subsection 37(3) provides that capital instruments created and issued by the University (a) may be described in any way determined by the University and (b) are to be created and issued on whatever terms the University determines.

Subsection 37(4) requires the University to keep whatever registers for the purposes of this section as are prescribed by regulations made under this Act.

New section 37A – Notice of borrowing

New subsection 37A(1) requires the University, if it intends to borrow money **AND** seek a guarantee under section 37B for that borrowing, to (a) give the Minister reasonable notice of that intention and (b) notify the Minister of the outcome.

Subsection 37A(2) provides that a liability of the University is not unenforceable or in any way affected if the University does not comply with subsection (1) of this section.

New section 37B – Guarantees

Subsection 37B(1) provides that the Treasurer may, on the Minister’s recommendation, guarantee the performance by the University of any financial obligation of the University.

Subsections 37B(2) and (3) set out certain requirements that must be observed in the drawing up of the terms of a guarantee.

Subsection 37B(4) provides that payments made by the Treasurer under a guarantee (if one is provided) are appropriated from the Consolidated Account (this provision makes this Bill a “money Bill”, needing to be introduced in the Legislative Assembly).

Subsection 37B(5) provides that moneys received or recovered from the University under the terms of a guarantee are to be credited to the Consolidated Account.

New section 37C – Charges for guarantee

Subsection 37C(1) provides that the Treasurer may, after

consultation with the University, fix charges to be paid by the University in respect of a guarantee, if one has been granted under section 37B.

Subsection 37C(2) provides that charges are (a) to be made in instalments at times determined by the Treasurer and (b) be credited to the Consolidated Account.

Clause 77: Section 38B amended

This clause inserts new subsection (3) to **section 38B – Repayment of Trust moneys**. The effect is that borrowings and guarantees are not treated as trust moneys for the purposes of section 38A and 38B.

Clause 78: Section 41 amended

This clause amends subsection (6b) of **section 41 – Establishment of Student Guild** – by inserting “being or” before “not being”. The subsection would now read:

*No academic benefit, right or privilege shall be denied to or withheld from any enrolled student by reason of that student **being or** not being a member of the Student Guild.*

Clause 79: Section 41A replaced

This clause deletes and replaces **section 41A – Amenities and services fee**.

Replacement section 41A – Amenities and services fee – provides that a Statute may be made to provide for an annual amenities and services fee and (without limitation) the Statute may prescribe or provide for the matters set out in subsections (1)(a) to (1)(f). It has been requested by the universities because it will enable them to respond to any commonwealth requirements that conflict with the requirements of the current section, such as a decision by a Federal Government to bar the charging of the fee. The replacement section enables the universities to adapt without the need to seek amendments to their Acts or to devise ‘work-around’ arrangements that might not be valid. In 2011 the Gillard Labor Government brought in the *Higher Education Legislation Amendment (Student Services and Amenities) Act* (Cth). The WA universities have found it difficult to comply simultaneously with the provisions of the State Acts and the Commonwealth Act. The specificity of the Commonwealth’s requirements about permissible usage of the funds sits uneasily with the State Acts which are not specific about purposes, referring only to Senates/Councils prescribing by Statute the processes for determining the “broad categories” of allowable Guild expenditure and for resolving disputes between the Senates/Councils and the Guilds in relation to that determination. The Commonwealth legislation does not contemplate “broad categories” of allowable expenditure; it is very specific on this matter. Student consultation is required under both the State and the Commonwealth legislation, but under the former it is aimed at determining the ‘broad categories’, and under the latter it

is aimed at determining priorities among specific allowable services. There are no penalties in the State Acts for non-compliance with the provisions, but there are in the Commonwealth's legislation. This new section makes it easier for the University to deal with any dual compliance difficulties. Subsection (2A) requires the Council to pay to the Student Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

Clause 80: Section 41B amended

Current section 41B – Council to include detail in Statute – sets out certain requirements that must be defined by Statute. Paragraph (a) of section 41B(2) requires the Statute to prescribe processes for determining the broad categories within which the fees are to be expended and paragraph (b) the processes for resolving disputes that might arise in the process of those determinations.

Subclause (1) of this clause deletes section 41B(2) and substitutes a replacement subsection that requires that the Council must specify, by Statute (a) the broad categories of amenities and services within which the fees are to be expended; and (b) the process for determining those categories.

Subclause (2) of this clause deletes “the fees” from subsection (3) of the section, and inserts instead “any fees”. Subsection (3) requires the Council by Statute to prescribe the measures by which the Student Guild is to account for fees received.

Sections 41A and 41B need to be read in conjunction with the requirements of section 19.43 of the Commonwealth's *Higher Education Support Act 2003*, subsection (4) of which specifies 19 permissible services upon which the fee may be expended. This Commonwealth requirement, in effect, largely circumscribes, the University and Guild's discretion under section 41A of the State Act, leaving little, if any room for dispute between the University Council and the Student Guild.

Clause 81: Section 42 amended

This clause amends **section 42 – Governor to be Visitor** – by deleting subsection (1) and inserting instead (1) The governor is the Visitor of the University, and has the functions that Visitors usually have.

The Bill proposes that this same wording for the functions of the Visitor be inserted in each of the other three public university Acts. It is regarded as a direct and contemporary statement of the role of the Visitor for any Australian university.

Clause 82: Sections 43 and 44 replaced

This clause replaces **section 43 – Exemption from rate or tax** – with a new section that connects to the proposed provision at new section 30E(2).

Subsection 43(1) remains unchanged.

Subsection 43(2) is amended to provide at paragraph (2)(b) that University property leased for a commercial purpose (as defined in

section 30A) is not exempt from rates.

Subsection 43(3) is inserted and points to section 33 of the *Land Tax Assessment Act 2002* for the requirements that University land use must satisfy for an exemption from land tax.

This clause also deletes **section 44 – No religious tests**. The section bars the administration of any religious test to entitle a person to be admitted to or graduate from the University or to hold office in the University. This section is judged to be not now needed in light of the *Equal Opportunity Act 1984* sections 18 and 61.

This clause also inserts a **new section 44A – Regulations** - to provide a regulation-making power for the Governor, on the recommendation of the Minister, to make regulations, necessary or convenient, under the Act. Subsection (2) of the section requires the Minister to consult with the University Council before making any recommendation to the Governor. Regulations are required under new section 30L – Payment agreements – and may be required under new section 37(4), the keeping of registers in relation to borrowing and other ways of raising money.

Clause 83: Part XI Division 1 heading inserted

This clause inserts at the beginning of Part XI, Transitional and savings, the heading:

Division 1 - General

Clause 84: Sections 45 and 46 deleted

This clause deletes **section 45, Termination of office**, and **section 46, Continuation of members of the Council**. Both sections are spent savings provisions inserted by the *Western Australian College of Advanced Education Amendment Act 1990*.

Clause 85: Section 52 deleted

This clause deletes **section 52, Board of Academy continued**, a spent savings provision inserted by the *Western Australian College of Advanced Education Amendment Act 1990*.

Clause 86: Part XI Division 2 inserted

This clause inserts the heading:

Division 2 – Transitional provisions for *Universities Legislation Amendment Act 2016*

New section 54 - Terms used: commencement day

For the purposes of the Division, “commencement day means the day on which section 48 of the *Universities Legislation Amendment Act 2016* comes into operation

New section 55 - Transitional provisions (Council) provides for the transition from the membership of the Council prior to

commencement day to that proposed in clause 55.

New section 56 - Transitional provisions (Deputy Chancellor) provides that the person who holds office as Pro-Chancellor under section 12 immediately prior to commencement day continues to hold office as Deputy Chancellor for the balance of the term of office. The change of title is effected by clause 60 of this Bill.

New section 57 - Transitional provisions (Vice-Chancellor) provides that the person who holds office as chief executive officer under section 30 immediately prior to commencement day continues to hold office as Vice-Chancellor. The change of title from chief executive officer to Vice-Chancellor is effected by clause 73 of this Bill.

New section 58 - Transitional provisions (Advisory Board of the Academy) provides that any person who, immediately before commencement day, holds office as a member of the former Board continues to hold office as a member of the Advisory Board of the Academy referred to in proposed section 25(1) under clause 66, for the balance of his or her term.

New section 59 - Transitional provisions (Statutes) provides that new section 27(2) does not apply to Statutes made and published before commencement day, and also not to Statutes made but not yet published in the *Gazette* before commencement day.

New section 60 - Transitional provisions (guarantees) provides that a guarantee given under current section 37 and in force immediately before commencement day continues as if it had been given under new section 37B.

New Section 61 - Transitional provisions (amenities and services fee) provides that current section 41A continues to apply during the “transition period”, which is defined as the remainder of the calendar year beginning on commencement day.

Clause 87: Schedule 1 clause 5 deleted

This clause deletes **Schedule 1 clause 5 – Quorum where clause 3 applies** – which determines the quorum of a Council meeting considering a matter if by Schedule 1 clause (3) a member is disqualified in relation to the matter. While the deleted provision enabled a smaller quorum in the circumstances, the University takes the more conservative view that the ordinary quorum provision (section 14 of the Edith Cowan Act) should be used even where there are conflicting interests under clause 3

Clause 88: Schedule 1 clause 6 amended

This clause amends **Schedule 1 clause 6 – Minister may declare clauses 3 and 5 inapplicable** - by deleting reference in subclause (1) to clause 5 which is deleted by clause 87 of the Bill (above).

Please note that clauses 89 to 127 **amend the *Murdoch University Act 1973***

Part 4 – Murdoch University Act 1973 amended

Clause 89: Act amended

This clause informs the reader that this Part of the Bill amends the *Murdoch University Act 1973*.

Clause 90: Part 1 heading inserted

This clause inserts before section 1, Short title, the heading

Part 1 - Preliminary

Clause 91: Section 3 amended

This clause amends **section 3 – Terms used**.

Subclause (1) deletes from section 3(1) the definitions of ‘convocation’, ‘Pro-Chancellor’, and ‘section’.

Subclause (2) inserts definitions for: casual vacancy, Deputy Chancellor, residential accommodation and University land.

Subclause (3) amends section 3(2) to read:

Any question arising as to whether a person is or is not a member of the academic **or other** staff, or an officer ~~or servant~~ or employee of the University, shall be determined by the Senate and the decision of the Senate thereon is final.

Clause 92: Part 2 heading inserted

This clause inserts the following heading after section 3:

Part 2 – Murdoch University

Clause 93: Sections 6 and 7 replaced

This clause replaces **section 6 – Functions of the University** – with a combination of contemporary rewording of existing functions and the addition of some new functions. Of the functions proposed in subsection (1), paragraphs (a) to (c) and (f) and (g) are contemporary statements of the University’s core functions: teaching, research and community engagement. Proposed subsections (d) and (e) are new functions which remove doubt as to whether the University may use its assets commercially and to generate revenue for the purpose of funding and carrying out its core functions. This proposed list of functions closely resembles the list of Curtin University’s functions as amended by clause 10 of this Bill. This clause also inserts sections 6(2) and 6(3) the wording of which closely resembles existing sections 7(2) and (3) of the Curtin Act.

This clause also deletes **section 7 – No Discrimination**, subsection (1) of which is directed against gender discrimination and subsection (2) against religious, racial and political discrimination. This section is judged to be not now needed in light of the *Equal Opportunity Act 1984* sections 18 and 61.

Clause 94: Part 3 heading inserted

This clause inserts before section 8 the heading:

Part 3 – Constitution of University

Clause 95: Section 8 amended

This clause amends **section 8 – Constitution**.

Subclause (1) of this clause deletes “Convocation” from section 8 – Constitution – and substitutes a new paragraph (c) “graduates of the university”.

Subclause (2) inserts “and” after paragraphs (a) and (b) of the section.

Clause 96: Section 9 replaced

This clause deletes **section 9 – Visitor** – and replaces it with a contemporary statement of the role.

Clause 97: Section 10 amended

This clause amends **section 10 – Chancellor**.

Subclause (1) deletes and replaces section 10(1) with a contemporary redrafting of the current section to the same effect.

Subclause (2) is amended to achieve gender neutral phrasing.

Subclause (3) adjusts section 10(3) to enable the Chancellor to have a term not exceeding 3 years rather than a fixed term of 3 years.

Subclause (4) is amended to achieve gender neutral phrasing.

Clause 98: Section 11 amended

This clause amends **section 11 – Pro-Chancellor** to change the title of that office to Deputy Chancellor.

Subclause (1) deletes “Pro-Chancellor” in section 11(1) and inserts instead “Deputy Chancellor”.

Subclause (2) changes the term for this (renamed) position from the current 2 years to a term not exceeding 3 years.

Subclause (3) deletes “Pro-Chancellor” from section 11(2a) and inserts instead “Deputy Chancellor”.

Subclause (4) deletes “Pro-Chancellor” from section 11(3) and inserts instead “Deputy Chancellor”; and amends the section to achieve gender neutral phrasing.

Clause 99: Section 12 amended

Section 12 – Senate – sets out the membership of the Senate (subsection (1)); certain eligibility criteria for membership of Senate (subsections (2) and (2a)); and certain procedural arrangements and requirements for the Senate (subsections (3) to (8)).

Subclause (1) of this clause deletes subsection (1) - the current provisions for the size and composition of the Senate - and inserts new provisions (a) to (i). The current maximum is 19 members. The proposed composition of the Senate has a maximum of 17 members. The Chancellor and Vic-Chancellor are retained, elected academic staff are reduced from 3 to 1, the 1 elected salaried officer is retained, 2 elected students are retained, 2 elected graduates replace 2 elected Convocation members of the University, Governor’s appointees are reduced from 6 to 3, the maximum

number of co-opted members is increased from 3 to 5, and the President of the Academic Council is an addition.

Proposed section 12(2) provides that a person who holds an elective office is not disqualified from becoming a member of the Senate.

Subclause (2) of this clause amends section 12(2) to make members of staff of the University and enrolled students ineligible to be appointed by the Governor (proposed section 12(1)(g) or by co-option by the Senate (proposed section 12(1)(h)).

Clause 100: Section 14 replaced

This clause replaces **section 14 – Tenure of office** – and inserts **new section 13 – Nominations Committee**.

New section 13 is a provision that requires the Senate to establish and maintain a committee called the Nominations Committee.

Subsection (2) sets 6 as the maximum membership of the Committee.

Subsection (3) makes certain members of the Senate ineligible to minimise the possibility of conflicts of interest.

Subsection (4) sets the functions of the Nominations Committee to be to maintain lists of persons who are eligible and willing to be appointed to any Senate vacancy or casual vacancy, and to recommend relevantly to the Minister or the Senate suitable candidates for appointment.

Subsection (5) provides that the fact that the Nominations Committee has not recommended a person for appointment under section 12(1) does not prevent the person from being appointed under that section.

This clause also inserts **new section 14 – Terms of Office of members**. Generally, members, other than the student members, will be given terms of 3 years, although subsection (4) does allow for shorter terms where it makes sense to do so. Student members have 1-year terms. Members, other than student members, may serve a maximum of 3 successive terms. Student members may serve two terms. The Vice-Chancellor is an *ex officio* member of the Senate.

Clause 101: Section 15 amended

This clause amends **section 15 – Resignation, disqualification and vacation of office**.

Subclause (1) deletes and replaces subsections (1) and (2) of the section. Under new subsection (1) the Chancellor may resign to the Minister rather than to the Visitor. Under new subsection (2) the Deputy Chancellor (previously Pro-Chancellor) or a member of the Senate may resign to the Minister rather than to the Chancellor.

Subclauses (2)(a), (b) and (c) amend section 15(3) to achieve gender neutral phrasing.

Subclause (3) deletes and replaces section 15(4) with a provision that broadens the scope of the section. Currently, the section provides that elected staff and students who respectively cease employment or enrolment must step down. The replacement section requires any member who ceases to hold the required qualification to step down.

Subclause (4) amends section 15(5) to achieve gender neutral phrasing.

Clause 102: Section 15A amended

This clause amends section 15A(3) by deleting “2/3” and inserting instead “two-thirds”. It’s a ‘housekeeping’ amendment.

Clause 103: Section 16 replaced

This clause deletes **section 16 – Appointment to casual vacancies** and inserts instead **section 16 – Casual vacancies**. The replacement section simplifies and reduces the current section, which has 5 subsections, to a single provision to the effect that casual vacancies are to be treated the same as vacancies that occur due to expiration of terms.

Clause 104: Section 17 amended

This clause makes two minor amendments to **section 17 – Functions of Senate, its powers and duties**.

Subclause (a) replaces in section 17(2)(b) “and servants” with “and employees” in keeping with contemporary terminology.

Subclause (b) deletes in section 17(2)(c) “relating thereto” and inserts instead “made under section 26”, that section being the Senate’s (not the Governor’s) regulation-making power of the Act.

Clause 105: Section 18 replaced

This clause deletes and replaces **section 18 – Delegation by Senate**.

The replacement section 18, under subsection (1)(a) adds “member of the Senate” to the list of possible delegates, and under subsection (3) adds the ability of a delegate to sub-delegate, something not currently permitted under the section, but which is needed by the Vice-Chancellor in particular in many matters.

Clause 106: Section 19 replaced

This clause replaces **section 19 – Convocation** with **new section 19A – Remuneration and allowances for Senate members** which provides for remuneration (if any) and allowances (if any) of members of the Senate, to be determined by the Salaries and Allowances Tribunal. Clauses 191 to 193 of this Bill consequentially amend the *Salaries and Allowances Act 1975* accordingly.

Subsection 2 of the new section provides that remuneration (if any) and allowances (if any) are to be paid out of funds of the University.

Clause 107: Section 20 amended

This clause amends subsection (2d) of **section 20 – Guild of**

students – by inserting “being or” before “not being”. The subsection would now read:

*No academic benefit, right or privilege shall be denied to or withheld from any student by reason of that student **being or not being** a member of the Guild.*

Clause 108: Section 20A replaced

This clause deletes and replaces **section 20A – Amenities and services fee**.

Replacement section 20A – Amenities and services fee – provides that a Statute may be made to provide for an annual amenities and services fee and (without limitation) the Statute may prescribe or provide for the matters set out in subsections (1)(a) to (1)(f). It has been requested by the universities because it will enable them to respond to any commonwealth requirements that conflict with the requirements of the current section, such as a decision by a Federal Government to bar the charging of the fee. The replacement section enables the universities to adapt without the need to seek amendments to their Acts or to devise ‘work-around’ arrangements that might not be valid. In 2011 the Gillard Labor Government brought in the *Higher Education Legislation Amendment (Student Services and Amenities) Act* (Cth). The WA universities have found it difficult to comply simultaneously with the provisions of the State Acts and the Commonwealth Act. The specificity of the Commonwealth’s requirements about permissible usage of the funds sits uneasily with the State Acts which are not specific about purposes, referring only to Senates/Councils prescribing by Statute the processes for determining the “broad categories” of allowable Guild expenditure and for resolving disputes between the Senates/Councils and the Guilds in relation to that determination. The Commonwealth legislation does not contemplate “broad categories” of allowable expenditure; it is very specific on this matter. Student consultation is required under both the State and the Commonwealth legislation, but under the former it is aimed at determining the ‘broad categories’, and under the latter it is aimed at determining priorities among specific allowable services. There are no penalties in the State Acts for non-compliance with the provisions, but there are in the Commonwealth’s legislation. This new section makes it easier for the University to deal with any dual compliance difficulties. Subsection (3) requires the Senate to pay to the Student Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

Clause 109: Section 20B amended

Current section 20B – Senate to include detail in Statute – sets out certain requirements that must be defined by Statute. Subsection (1) requires the Statute to define the broad categories of amenities and services to which the Student Guild may apply fees paid to it. Subsection (2) requires that the Statute prescribe the processes for (a) determining the broad categories and (b) for

resolving disputes that arise in this process. Subsection (3) requires the Senate to make a Statute that prescribes the measures by which the Guild is to account for fees revenue received. Subsection (4) requires a Statute prescribing the process for reaching agreement about the expenditure of fees revenue not paid to the Guild.

Clause 109(1) deletes section 20B(1) and (2) and inserts instead new subsection (1) which (a) requires the Senate to prescribe by Statute (a) broad categories to which the Guild may apply fees and (b) the process for determining those categories.

Subclause (2) of this clause deletes section 20B(4).

Sections 20A and 20B need to be read in conjunction with the requirements of section 19.43 of the Commonwealth's *Higher Education Support Act 2003*, subsection (4) of which specifies 19 permissible services upon which the fee may be expended. This Commonwealth requirement circumscribes the University's and Guild's discretion under section 20B of the State Act, leaving little, if any room for dispute between the University Senate and the Student Guild.

Clause 110: Section 22 amended

This clause makes minor adjustments to **section 22 - Degrees and academic distinctions**.

Subclause (1)(a) amends section 22(1) by deleting "shall have" and inserting instead "has" so that the section reads "The University ~~shall have~~ has power to award ..."

Subclause (1)(b) adds after "regulations" in section 22(1) "made under section 26", that section being the Senate's (not the Governor's) regulation-making power under the Act.

Subclause (2) makes the same amendments to section 22(2) as are to be made to section 22(1) – immediately above.

Subclause (3) deletes and replaces section 22(3), the difference being that the replacement section refers to being admitted to an "honorary degree" rather than being admitted "honoris causa" to any degree.

Clause 111: Section 23 amended

This clause amends **section 23 – Vice-Chancellor**.

Subclause (1) modernises the phrasing of the terms of the Vice-Chancellor's holding of the office.

Subclause (2) amends subsection (2) to introduce gender neutral language and to make it clear that the regulations are those made under section 26 by the Senate.

Subclause (3) deletes section 23(5) and (6) and inserts instead a new section (5) which enables the Vice-Chancellor to sub-delegate.

Clause 112: Part 4 heading inserted

This clause inserts, after section 23, the heading:

Part 4 – By-laws, Statutes and regulations

Clause 113: Section 24 amended

This clause amends **section 24 – By-laws**.

Subclause (1) inserts before section 24(1):

- new subsection (1A), which defines the meaning for the purposes of the section, “authorised person” and “contractor”
- new section (1B), which enables the Vice-Chancellor to designate a member of staff and authorise a contractor to be an “authorised person” for the purposes of specified subsections of the section
- new section (1C), which specifies that a designation or authorisation made under (1B) is revoked if the person ceases to be a member of staff or a contractor.

Subclause (2) deletes \$50 in section 24(1)(d) and inserts instead \$1 000 as the maximum penalty for any breach or non-observance of a by-law made under the Act.

Subclause (3) modernises the language of the stem of section 24(3). The reference becomes persons authorised by the Vice-Chancellor rather than persons authorised by the Senate, or any police officer.

Subclause (4) deletes section 24(4), (5) and (6). These subsections relate to the making of by-laws by Senate, their approval by the Governor and then gazettal. These matters are now provided for by the *Interpretation Act 1984*, sections 41 and 42.

Subclause (5) provides for 8 “machinery” amendments to section 24(7), which is the section that lists all the matters on which the Senate may make by-laws:

- (5)(a) – “for any of the following purposes” replaces “for –” in the stem of the section
- (5)(b) – in paragraph (b) of the section, “an authorised person” replaces “a person authorised under that by-law”
- (5)(c) – in paragraph (bb) “thereto” is replaced by specific reference to removal of vehicles
- (5)(d) – for gender neutrality in paragraph (ha)
- (5)(e) – deletes “and” at the end of paragraph (i)
- (5)(f) – substitutes in paragraph (j) reference to police constable or officer or servant of the university with ‘an authorised officer’
- (5)(g) – in paragraph (j) deletes - “, and the enforcement of the by-laws” - from the end of the paragraph and by subclause (5)(h) inserts these words as a new paragraph (k).

Subclause (6) makes two gender neutral amendments to section 24(10).

Clause 114: Section 25 amended

This clause amends **section 25 – Statutes**.

Subclause (1) deletes section 25(1), (2) and (3), which deal with matters which are now proposed to be dealt with under the provisions of section 26A.

Subclause (2) amends section 25(4) which lists the matters, (a) to (x), on which the Senate make Statutes.

- (a) deletes in paragraph (i) “officers and servants” and inserts instead “and officers and employees”
- (b) deletes paragraphs (j) and (k), which refer to Convocation, reference to which is deleted by this Bill (see clauses 91, 95 and 106).
- (c) deletes reference to Convocation in paragraph (l)
- (d) inserts new paragraph (ta) after paragraph (s) to enable the Statute for an annual amenities and services fee required by the amendment to 20A proposed by clause 108, and new paragraph (tb) for matters required by new section 20B (see clause 109).

Clause 115: Section 26A and 26B inserted

This clause inserts **new section 26A – Approval, publication, disallowance and proof of Statutes and by-laws**. The provisions of this section and those of new section 26B replace the current provisions at section 24(4) (5) and (6) for the making, approval by the Governor and Gazettal of by-laws and those at section 25(1), (2) and (3) for the making, approval by the Governor and Gazettal of Statutes and the disallowance provision at section 27. New section 26A requires University Statutes and by-laws to be approved by the Governor and published in the *Gazette* before they can take effect. Once gazetted a Statute or by-law will have to be laid before each House of Parliament for possible disallowance. Once gazetted, a Statute or by-law is subject to the provisions of section 42 of the *Interpretation Act 1984*, as if the Statute or by-law were a regulation. Subsection (3) sets out what constitutes evidence of a Statute or by-law in court proceedings.

New section 26B – Statutes to be made readily available to public - requires the Senate to ensure that all its Statutes and by-laws (ones made after commencement of replacement section 27(1) and those in force immediately before commencement) are readily available to the public by whatever means the Senate considers appropriate. Subsection (2) of the section provides that publication in the *Gazette* is not sufficient compliance with the requirement for ready availability. Subsection (3) provides that subsection (1) ceases to apply when a Statute or by-law ceases to have effect; that is the spent Statute or by-law would be withdrawn from publication.

Clause 116: Section 26 amended

This clause amends **section 26 – Regulations**

Subclause (1) replaces “servants” with “employees” in section

26(1).

Subclause (2) deletes “Pro-Chancellor” and inserts instead “Deputy Chancellor” in subsection (2), which effects the change of title.

Subclause (3) replaces “servant” with “employee”.

Note: the heading of the section will in future read “Regulations made by the Senate” to distinguish the section from the new section 28A proposed by clause 117, “Regulations made by Governor”.

Clause 117: Section 27 replaced

This clause replaces **section 27 – Disallowance** - because its provisions are overtaken by new section 26A.

This clause also inserts new section **28A – Regulations made by Governor** to provide for the Governor, on the recommendation of the Minister, to make regulations, necessary or convenient, under the Act. Subsection (2) of the section requires the Minister to consult with the University Senate before making any recommendation to the Governor. Regulations are required under new section 32P – Payment agreements – and may be required under new section 32A(4), the keeping of registers in relation to borrowing and other ways of raising money.

Clause 118: Part 5 heading and Part 5 Division 1 heading inserted

This clause, before section 28, inserts:

Part 5 – University lands and financial provisions

Division 1 – Vesting of lands in University

Clause 119: Part 5 Division 2 heading inserted

This clause, after section 28, inserts:

Division 2 Financial provisions and dealings in land

Clause 120: Section 29 amended

This clause amends **section 29 – Financial provisions and dealings in land**.

Clause 120(1) makes several amendments to section 29(1):

- **Subclause (1)(a)** deletes paragraphs (b) and (c). These two paragraphs enable the University to borrow money. The borrowing provisions are now proposed to be in new sections 32A to 32D (see clause 123).
- **Subclause (1)(b)** deletes paragraph (f) and inserts instead new paragraphs (f), (ga) and (gb). New paragraphs (f) and (ga) are a reformulation of deleted (f), the essential difference being that instead of the Governor approving leases exceeding 21 years, it will now be the Minister. New

paragraph (gb) enables the University to enter business arrangements (involving University land for the purposes of the provisions proposed in new Division 3)

- **Subclause (1)(c)** deletes the semicolon at the end of paragraph (g) and inserts instead a full stop.
- **Subclause (1)(d)** deletes paragraph (h), which relates to housing assistance to members of the academic or other staff.

Clause 120(2) deletes section 29(2) and (3). Section 29(2) relates to rates and taxes on University property and is superseded by proposed new section 30A inserted by clause 121. Section 29(3) is a spent (transitional) provision related to land held under the *Murdoch University Planning Board Act 1970* which is repealed by clause 175 of this Bill.

Clause 121: Section 30 inserted

This clause inserts after section 29 new **section 30A - Exemption from rate or tax**. This new section provides (1) that no rate may be charged on University land unless (2) it is being used for a private purpose or for a commercial purpose under an approval granted under proposed new section 32M. Subsection (3) points to section 33 of the *Land Tax Assessment Act 2002* for the requirements that University land use must satisfy for an exemption from land tax.

Clause 122: Section 31 amended

This clause amends section 31 Trust moneys.

Clause 122(1) amends section 31(2):

- **Subclause (1)(a)**, amends subsection (2)(a) which provides that money loaned to the University from a trust is to be repaid with interest at a rate fixed by the Governor. The amendment proposes that the interest rate be now set by the Minister.
- **Subclause (1)(b)** amends subsection (2)(b) which provides that the Governor approves the number of equal half-yearly instalments by which a loan to the University from trust funds is to be repaid. The amendment proposes that this now be approved by the Minister.
- **Subclause (1)(c)** amends paragraph (d) of the section to achieve gender neutral phrasing.

Subclause (2) deletes in section 31(4) “land vested in the University” and inserts instead “University land” in accord with the definition of that term inserted in section 3(1) by clause 91(2) of this Bill.

Clause 123: Part 1 Division 2C inserted

After Part 1 Division 2B the following headings and new sections 32E to 32Q are inserted:

Division 3 – Leasing University land for commercial purposes

Subdivision 1 - Preliminary

New section 32E - Terms used

Sets out the definitions of 11 terms used in this new Division: advance determination; approval; commercial arrangement; commercial purpose; lease; limited company; participate; participate in a commercial arrangement; payment agreement; University land; and university development proposal.

New section 32F – Object of this Division

States that the object is to enable the University to seek and obtain the Minister's approval to lease University land, as defined in section 3(1), for purposes that would not otherwise be authorised by the Act.

New section 32G – Effect of Division on University functions, powers and obligations

This new section has three subsections:

Subsection 32G(1)(a) provides that this Division does not limit sections 4, 6 and 29 of this Act.

Subsection 32G(1)(b) provides that this Division does not limit any function, power, right, privilege, immunity or obligation of the University under (i) this University's Act or any other written law, or (ii) the principles and rules of common law and equity.

Subsection 32G(2) provides that nothing in the Division imposes and requirement on the University to seek or obtain the Minister's approval to lease any University land.

Subsection 32G(3) provides that nothing in this Division affects the obligation of the University under section 29(1)(ga) to obtain Minister's approval of leases of over 21 years duration.

Subdivision 2 – Power to lease University land for commercial purposes

New Section 32H – University may lease University land for commercial purposes with Ministerial approval

This section has five subsections:

Subsection 32H(1) provides that the University can, with the Minister's approval (a) enter into a transaction that has a commercial purpose or (b) participate in any commercial arrangement that has a commercial purpose.

Subsection 32H(2) provides that (a) and (b) of subsection (1) can be done directly or through a wholly-owned subsidiary.

Subsections 32H(3) and (4) provide respectively that subleases of a ministerially approved commercial lease can be granted without the need to seek further approvals, subject to any conditions attached to the approval.

Subsection 32H(5) provides that while a Ministerial approval (a)

confers the power on the University to do the thing authorised by the approval, it does not (b) exempt the University or any other person from compliance with, or give authorisation to do or omit to do anything contrary to any other written law or any obligation of the University.

New section 32I – Effect of approval to lease University land

Subsection 32I(1) provides that land leased in accordance with an approval under section 30I is to be taken to be used for the purposes of the University or for purposes incidental to those purposes. The effect is that doubt is removed that land leased without such approval might be ‘beyond purpose’ and ultra vires the Act.

Subsection 32I(2) provides that section 33 of the *Land Tax Assessment Act 2002* overrides this proposed section, meaning that the leased land is not exempt from land tax (see further clause 121 of this Bill, which inserts new section 30A – Exemption from rate or tax).

New section 32J – Approval in principle of university development proposal

Proposed sections 32J to 32M set out a three-step procedure that the University may follow: approval in principle; advance determination of approval; and approval. While the third step – approval - is required, the first two steps are not. The first two steps are available to assist investor confidence during the early stages of preparation of a university development proposal (as defined in section 32E). The University may skip either or both of the first two steps.

Subsection 32J(1) provides that the University may apply for approval in principle of a development proposal

Subsection 32J(2) provides that the application must describe what the University is seeking to have eventually approved, including (a) the details of the land to be leased and (b) the purpose for which the land is to be leased.

Subsection 32J(3) provides that if the University applies for approval in principle, (a) the application must be made in the required form; (b) the Minister may request further information; and (c) the Minister may grant or refuse the application.

Subsection 32J(4) provides that the Minister must (a) notify the decision in writing and (b) if the application is refused, notify the reasons for refusal.

New section 32K – Application for advance determination of approval

Subsection 32K(1) provides that the University may apply for a

determination that, if an application is (later) made for an approval under section 32M, the approval will be granted.

Subsection 32K(2) provides that prior approval in principle is not required for the purpose of the section

Subsection 32K(3) sets out what the application for advance determination must cover: (a) details of the land to be leased; (b) the purpose for which the land is to be leased; and (c) the financial details of the proposal, including the amounts of the University's investment, the proposed lessee's investment, and that of any other parties involved.

Subsection 32K(4) provides that if approval in principle was obtained, the application for advance determination must identify any material difference between the proposal approved in principle and the proposal being submitted for advance determination.

Subsection 32K(5) provides that an advance determination application (i) must be made in the correct manner and form; (ii) if required, be accompanied by a payment agreement (refer proposed section 32P); and (iii) the Minister may request additional information.

New Section 32L – Advance determination of approval

This section provides that:

- (1) The Minister may grant or refuse the application
- (2) The Minister must grant the application if:
 - a. Approval in principle was previously obtained; and
 - b. There is no material difference since then; and
 - c. The Minister is satisfied in relation to the proposal
- (3) The Minister must notify the decision in writing and, if refused, give reasons for the refusal
- (4) The Minister, in granting an advance determination, may specify a time after which it lapses
- (5) The Minister may subsequently extend the time specified in subsection (4)

New section 32M - Approvals

This section provides that:

- (1) The University may apply to the Minister to enter into a commercial transaction or participate in any commercial arrangement that has a commercial purpose (refer to section 32E for definitions of terms)
- (2) The application for approval (i) must be made in the correct manner; and (ii) be accompanied by a payment agreement, if required; and (iii) may require additional information as requested by the Minister
- (3) In order to apply for an approval, it is not necessary for the University to have applied for or obtained approval in principle or advance determination

- (4) The Minister may grant or refuse to grant the approval
- (5) However, the Minister must grant the approval if satisfied that:
 - a. An advance determination is in force; and
 - b. There is no material deviation from the application that was made for the advance determination
- (6) A material deviation would be (a) the area of land to be leased has increased by 20% or more; and/or the amount of investment by the University has increased or decreased by 20% or more.

New section 32N – Notification of decision on application for approval

This section provides (1) that the Minister must notify the decision in writing and if the decision is to refuse to grant the application, the reasons for the refusal; and (2) the Minister may attach conditions to an approval and if so, they must be specified in the approval.

New section 32O – Alteration of approval

This section provides that the Minister:

- (3) May, at the request of the University, vary or revoke any conditions attached to an approval or attach new or additional conditions
- (4) Cannot make changes to the terms of an approval unless the University agrees to the changes, but:
 - a. The Minister is not obliged to make any or all of the requested changes; and
 - b. The Minister may propose variations, alternatives or additions to the changes requested by the University; and
 - c. The Minister may refuse to change the terms of an approval unless the University agrees to variations, alternatives or additions proposed by the Minister.

New section 32P – Payment agreements

This section provides that the Minister may enter into a written agreement with the University to cover reasonable costs and expenses incurred by the Minister in considering applications under this Division for advance determination and approval.

Subsection 3 provides for the making of regulations by the Governor that would set out the parameters of a payment agreement.

A payment agreement is not a requirement under the section; it is an option available to the Minister when considering complex applications, which are expected to be the exception rather than the rule.

New section 32Q – Minister may delegate functions under this Division

This section enables the Minister to delegate, in writing, to the chief

executive officer of the Department principally assisting the Minister in the administration of this Act any or all of the Minister's functions under this Division.

Division 4 - Miscellaneous

Clause 124: Section 33 amended

This clause amends **section 33 – Superannuation scheme for University staff etc.** In section 33(1) “servants” is deleted and replaced by “employees”.

Clause 125: Part 6 inserted

This clause inserts after section 34:

Part 6 - Validation and transitional provisions

Division 1 – Validations

New section 35 – Certain leases of university land validated

Subsection (1) of this section defines 4 terms for the purposes of the section: “commencement day”, “relevant lease”, “university purposes”; and “University’s South Street campus”.

Subsection (2) has a Table of 11 relevant leases.

Subsection (3) validates the 11 relevant leases.

Division 2 – Transitional provisions for Universities Legislation Amendment Act 2016

New section 36 – Terms used: commencement day

In this Division “commencement day” means the day section 89 comes into operation.

New section 37 – Transitional provisions (Senate) provides for the transition from the membership of the Senate prior to commencement day to that proposed in clause 99.

New section 38 - Transitional provisions (guarantees) provides that a guarantee given under current section 32 and in force immediately before commencement day continues as if it had been given under new section 32C.

New section 39 - Transitional provisions (Statutes and by-laws) provides that new section 27 does not apply to Statutes and by-laws made and published before commencement day (the day section 117 of the amendment Act comes into operation), and also not to Statutes and by-laws made but not yet published in the *Gazette* before commencement day.

Clause 126: Schedule 1 clause 5 deleted

This clause deletes **Schedule 1 clause 5 – Quorum where clause 3 applies** – which determines the quorum of a Council meeting considering a matter if by Schedule 1 clause (3) a member is disqualified in relation to the matter. While the deleted provision enabled a smaller quorum in the circumstances, the University takes the more conservative view that the ordinary quorum provision (section 12(6) of the Murdoch University Act) should be used even where there are conflicting interests under clause 3

Clause 127: Schedule 1 clause 6 amended

This clause amends **Schedule 1 clause 6 – Minister may declare clauses 3 and 5 inapplicable** - by deleting reference in subclause (1) to clause 5 which is deleted by clause 126 of the Bill (above).

Please note that clauses 128 to 130 **amend the *University of Notre Dame Australia Act 1989***

Part 5 – *University of Notre Dame Australia Act 1989* amended

Clause 128: Act amended

This Part amends the *University of Notre Dame Australia Act 1989*.

Clause 129: Section 15C amended

This clause amends section 15C by deleting “2/3” and inserting instead “two-thirds”. It’s a ‘housekeeping’ amendment.

Clause 130: Section 25 amended

This clause amends **section 25 – University is an independent body**.

Subsection 25(1) is deleted and replaced by new subsection (1) which has deleted “and, other than as provided in section 25A, no revenue or moneys are to be appropriated for the purposes of the University”.

Please note that clauses 131 to 174 **amend the *University of Western Australia Act 1911***

Clause 131: Act amended

This Part amends the *University of Western Australia Act 1911*

Clause 132: Section 2 replaced

This clause amends **section 2 – Terms used**. The section is deleted and replaced. The replacement section has definitions for: casual vacancy”; “Convocation”; “regulations”; “residential accommodation”; “Senate”; “Statutes”; “student”; “Student Guild”; “University”; and “University lands”.

Clause 133: Section 4 amended

This clause amends **section 4 – University to consist of Senate, Convocation, staff and students** by deleting subsections 4(2) and 4(3) which are spent.

Clause 134: Section 7 amended

This clause amends section 7 – Visitor

The clause deletes and replaces section 7 with the same wording of the functions of the Visitor as is being proposed for each of the other three public university Acts. It is regarded as a direct and contemporary statement of the role of the Visitor for any Australian university.

Clause 135: Section 8 amended

This Clause amends section 8 – Members – which sets out the membership of the Senate (subsection (1)); and certain eligibility criteria for membership of Senate (subsections (2) to (5)).

Clause 135(1) deletes section 8(1) and (2).

Subclause (1) inserts new provisions for the size and composition of the Senate. The current maximum size of 21 members is reduced to 17. Governor's appointees are reduced from 4 to 3, elected Convocation members are reduced from 4 to 2, elected academic staff are reduced from 3 to 1, the Chancellor and the Vice-Chancellor are retained, 3 elected students are reduced to 2 (elected by the students in the manner prescribed by regulations), coopted members increase from 3 to a maximum of 5, 1 elected non-academic salaried staff is retained, and a member of Academic Board (whomever is the Chair) is retained.

Subclause (2) provides that a person who holds an elective office is not disqualified from becoming a member of the Senate.

Clause 135(2) inserts after section 8(3) a new subsection 3A, which makes staff of the University ineligible to be elected to the Senate as Convocation members.

Clause 135(3) deletes section 8(5), which requires the majority of members to not be staff or students and is now not required, and inserts instead a new 8(5) that requires at least 4 members to be graduates of the University.

Clause 136: Section 9 replaced

This clause deletes **section 9 – Terms of members** and inserts new section **9A – Nominations Committee and a replacement section 9**.

New section 9A is a provision that requires the Senate to establish and maintain a committee called the Nominations Committee.

Subsection (2) sets 6 as the maximum membership of the Committee.

Subsection (3) makes staff and students members of the Senate ineligible to minimise the possibility of conflicts of interest.

Subsection (4) sets the functions of the Nominations Committee to be to maintain lists of persons who are eligible and willing to be

appointed to any Senate vacancy or casual vacancy, and to recommend relevantly to the Minister or the Senate suitable candidates for appointment.

Subsection (5) provides that the fact that the Nominations Committee has not recommended a person for appointment under section 8(1) does not prevent the person from being appointed under that section.

Replacement section 9 – Terms of members – provides that, generally, members, other than the student members, will have terms of 3 years (currently it is 4 years) and can serve 3 successive terms. Student members have 1-year terms and are not eligible to serve more than 2 successive terms. The Vice-Chancellor is an *ex officio* member of the Senate.

Clause 137: Section 11 replaced

This clause deletes **section 11 - People disqualified from being Chancellor, Pro-Chancellor or Senate member** – and replaces it with contemporary restatement of the section to the same effect.

Clause 138: Section 11A amended.

This clause amends **section 11A(3)** by deleting “2/3” and inserting instead “two-thirds”. It’s a ‘housekeeping’ amendment.

Clause 139: Section 11B inserted.

This clause inserts after section 11A **new clause 11B – Remuneration and allowances for Senate members** which provides for remuneration (if any) and allowances (if any) of members of the Senate, to be determined by the Salaries and Allowances Tribunal. Clauses 191 to 193 of this Bill consequentially amend the *Salaries and Allowances Act 1975* accordingly. Subsection 2 of the new section provides that remuneration (if any) and allowances (if any) are to be paid out of funds of the University.

Clause 140: Section 12 amended

This clause amends **section 12 – Chancellor**

Subclause (1) deletes “4 years,” from subsection (3) and inserts instead “3 years,” The term of 3 years corresponds to the term of a member of Senate under new section 9, other than a student member, who has 1 year.

Subclause (2) deletes “12 years” from subsection (4) and inserts instead “9 years”, a maximum consecutive period of office which corresponds to that which ordinarily a member other than a student member, may serve consecutively (a student member may serve a maximum of 2 consecutive 1-year terms).

Clause 141: Section 12A amended

This clause amends **section 12A – Pro-Chancellor.**

Subclause (1) and (2) make amendments respectively to the term of the Pro-Chancellor and his or her maximum consecutive terms that correspond to those for the Chancellor under clause 140 (above).

Subclause (3) deletes section 12(5) and inserts a provision to the same effect that, if the Chancellor is elected from among the members of Senate, the election creates a casual vacancy in the office of member of the Senate.

Clause 142: Section 13 amended

This clause amends **section 13 – Appointment of officers and management of affairs.**

Subclause (a) amends the lead in to the section by adding the words highlighted below:

Subject to this Act, **any relevant written law, any relevant industrial award or industrial agreement** and the Statutes, the Senate may from time to time appoint ...

Subclause (b) deletes “servants” and inserts instead “employees” in the section.

Clause 143: Section 15 replaced

This clause deletes and replaces **section 15 – Leasing University lands.**

Subsection (1) of the replacement section specifies that “lease” includes a sublease.

Subsection (2) specifies that the University may grant a lease of any University lands (defined in section 2) for a term not exceeding 21 years.

Subsection (3) specifies that the University may grant leases not exceeding 99 years and may mortgage University lands, with the approval of the Minister.

Clause 144: Section 15A amended.

This clause amends **section 15A – Trust moneys not immediately required may be used to erect buildings etc.**

Subclause (1) amends subsection (3B) of the section which provides that money loaned to the University from a trust is to be repaid with interest at a rate approved by the Governor. The amendment proposes that the interest rate be now approved by the Minister.

Subclause (2) amends subsection (3C) which provides that the Governor approves the number of equal half-yearly instalments by which a loan to the University from trust funds is to be repaid. The amendment proposes that this now be approved by the Minister.

Subclause (3) amends subsection (3E) of the section to achieve gender neutral phrasing.

Subclause (4) inserts new subsection (6) which specifies that sections 15B, 15C and 15(D) do not affect subsection (1) of the section (which relates to the investment of trust moneys).

Clause 145: Section 15B replaced.

Existing section 15B – Raising loans – is replaced by this clause,

which broadens the powers beyond borrowing to include other additional ways of raising money.

New section 15B – Borrowing and other ways of raising money

– has four subsections:

Subsection 15B(1) defines the meaning of “debt paper” for the purpose of the section.

Subsection 15B(2) provides that the University may do all or any of: borrow money; obtain credit; issue, acquire, hold or dispose of debt paper; create and issue capital instruments; arrange for financial accommodation to be extended to the University.

Subsection 15B(3) provides that capital instruments created and issued by the University (a) may be described in any way determined by the University and (b) are to be created and issued on whatever terms the University determines.

Subsection 15B(4) requires the University to keep whatever registers for the purposes of this section as are prescribed by regulations made under this Act.

New section 15C – Notice of borrowing

Subsection 15C(1) requires the University, if it intends to borrow money **AND** seek a guarantee under section 15D for that borrowing, to (a) give the Minister reasonable notice of that intention and (b) notify the Minister of the outcome.

Subsection 15C(2) provides that a liability of the University is not unenforceable or in any way affected if the University does not comply with subsection (1) of this section.

New section 15D – Guarantees

Subsection 15D(1) provides that the Treasurer may, on the Minister’s recommendation, guarantee the performance by the University of any financial obligation of the University.

Subsections 15D(2) and (3) set out certain requirements that must be observed in the drawing up of the terms of a guarantee.

Subsection 15D(4) provides that payments made by the Treasurer under a guarantee (if one is provided) are appropriated from the Consolidated Account (this provision makes this Bill a “money Bill”, needing to be introduced in the Legislative Assembly).

Subsection 15D(5) provides that moneys received or recovered from the University under the terms of a guarantee are to be credited to the Consolidated Account.

New section 15E – Charges for guarantee

Subsection 15E(1) provides that the Treasurer may, after consultation with the University, fix charges to be paid by the University in respect of a guarantee, if one has been granted under section 15D.

Subsection 15D(2) provides that charges are (a) to be made in instalments at times determined by the Treasurer and (b) be credited to the Consolidated Account.

New section 15F – Power of University to provide residential accommodation for staff and students.

Provides the same power as new section 17A in the Curtin Act and new section 17(fa) in the Edith Cowan Act. New section 15F(1) is that the University may provide residential accommodation for staff and/or students and (2) if the arrangement involves a lease of any part of University lands, new section 15(3) (Ministerial approval for the lease) does not apply.

Clause 146: Section 16AA inserted

This clause inserts, before section 16A, **new section 16AA – Authorised persons**

New section 16AA(1) inserts for the purposes of sections 16A to 16F the meanings of “authorised person”, “contractor” and “owner”.

New section 16AA(2) enables the Vice-Chancellor to designate a member of staff, and authorise a contractor, to be an “authorised person” for the purposes of specified subsections of the section.

New section 16AA(3) specifies that a designation or authorisation made under (1B) is revoked if the person ceases to be a member of staff or a contractor.

Clause 147: Section 16A amended

This clause amends **section 16A – By-laws regulating use etc. of University lands.**

Subclause (1) deletes 16A(1) (which has definitions for “authorised person”, “lands of the University” and “owner”) and replaces it with a section that gives the meaning of “lands of the University” (the other terms now being at new section 16AA(1) above).

Subclause (2), in relation to section 16A(2), amends by:

- a. Deleting reference to the approval of Governor because it is now to be required under new section 16(1)(b).
- b. Deleting reference to ‘hereafter described’ because the ‘lands of the University’ are defined in subsection (1).
- c. Deleting reference to ‘police constable’ in paragraph (d) of the section.
- d. Deleting paragraphs (j) and (k) and substituting paragraphs with contemporary phrasing.

Subclause (3) achieves gender neutral phrasing for paragraphs (a), (b) and (c) of section 16A(3).

Subclause (4) deletes section 16A(7) because it will now be covered in new section 16B(2) below.

Subclause (5) inserts “and” after paragraphs (a) to (i) of section 16A(2).

Clause 148: Sections 16B and 16C replaced.

This clause replaces **section 16B – Approval and publication of by-laws** and **16C – Penalty etc.**

The provisions of subsection (1) of **new section 16B** require University by-laws to be approved by the Governor and published in the *Gazette* before they can take effect. Subsection (2) sets out what constitutes evidence of a by-law in court proceedings.

Subsection (1) of replacement **section 16C – Penalties** – raises the current maximum penalty for any breach or non-observance of a by-law from \$100 to \$1 000. Subsection (2) provides that proceedings for recovery of a penalty may be taken by an authorised person (as defined in section 16AA(1)) in the name of the authorised person. Subsection (3) provides that penalties are to be paid to the Senate for the use of the University.

New section 16D – By-laws to be made readily available to public - requires the Senate to ensure that all its by-laws (ones made after commencement of replacement section 27(1) and those in force immediately before commencement) are readily available to the public by whatever means the Senate considers appropriate. Subsection (2) of the section provides that publication in the *Gazette* is not sufficient compliance with the requirement for ready availability. Subsection (3) provides that subsection (1) ceases to apply when a by-law ceases to have effect; that is the spent by-law would be withdrawn from publication.

Clause 149: Section 16E amended

This clause amends **section 16E – Regulations**.

Subclause (1) substitutes “employees” for “servants” in section 16E(1).

Subclause (2) substitutes reference to section 36 of the *Interpretation Act 1918* with reference to section 42 of the *Interpretation Act 1984*. The section provides that section 42 of the *Interpretation Act 1984* does not apply to regulations made by the Senate under this section and hence are not subject to the tabling and disallowance provisions of that section.

Clause 150: Section 16F amended

This clause amends **section 16F – Certain certificates of Chancellor etc. to be prima facie evidence**.

This clause (a) deletes reference to “Registrar” because a position in the University with that title no longer exists; and (b) substitutes “employee” for “servant”.

Clause 151: Section 16G inserted

New section 16G – Delegation by Senate – is a new provision enabling the Senate to delegate any function or activity of the University and for a person so delegated to further delegate the delegated power, authority, duty or function. The same or very

similar provision is inserted by this Bill to section 18 of the Murdoch Act, section 15 of the Edith Cowan Act and section 15 of the Curtin Act.

Clause 152: Section 17 amended

This clause amends **section 17 – Members**.

The clause deletes section 17(1) and inserts new section 17(1), which specifies the persons who are to be members of Convocation, which has four paragraphs. Paragraphs (a) and (b) are to the same effect as current paragraphs (a) and (b). Paragraph (c) brings in all members of Convocation who were members immediately before commencement day, not already covered by paragraphs (a) and (b). Paragraph (d) provides a discretion to Senate to admit members not covered by the paragraphs (a) to (c).

Clause 153: Section 18A inserted

This clause inserts new **section 18A – Functions of Convocation**, which specifies that Convocation's functions are to be prescribed by Statute.

Clause 154: Section 18 amended

This clause amends **section 18 – Warden** – by inserting after section 18(2) new subsection (3) which provides that the Warden (of Convocation) may resign by written notice to the Chancellor (a provision currently in section 19).

Clause 155: Sections 19 to 23 replaced

This clause **deletes sections 19 to 23, which together form Part 4 Division 5 Vacancies, and inserts sections 19, 20, 22 and 23.**

New section 19 – resignation – provides (1) that a Chancellor, Pro-Chancellor or a member of the Senate appointed by the Governor under section 8(1)(a) may resign by written notice given to the Minister; and (2) that any other member of the Senate may resign by written notice to the Chancellor.

New section 20 – Vacation of Senate office- provides for 3 circumstances (the same as current) under which a member of the Senate vacates office.

New section 22 - Casual vacancies – provides that casual Senate vacancies are to filled in the same manner as if that member's term has expired.

New section 33 – Reappointment – provides that subject to specified sections, a Chancellor, Pro-Chancellor, Warden or member of the Senate may at any time be reappointed or re-elected.

Clause 156: Section 24 replaced

This clause deletes **section 24 – Chairman** – and inserts instead new **section 23A – Chair of Senate**, which provides that (1) the Chancellor or the Pro-Chancellor (in the Chancellor's absence) is the chair of a meeting of the Senate; and (2) if neither of the above is present, the members present are to elect a person to preside as chair of the meeting.

This clause also inserts **new section 24 – Chair of Convocation** which provides that (1) the Warden is to chair a meeting of Convocation; and (2) if the Warden is not present, the members of Convocation present elect a person to preside at the meeting.

Clause 157: Section 27 amended

This clause amends **section 27 – Vice-Chancellor, appointment and functions of**.

Subclause (1) deletes section 27(1) as a spent provision.

Subclause (2)(a) deletes “by writing under his hand” and inserts “in writing in section 27(3); and (2)(b) achieves gender neutrality in the same section by replacing “him” with “Vice-Chancellor”.

Subclause (3) inserts new subsections (4) and (5) which provide that the Vice-Chancellor may in addition or instead of use a title other than “Vice-Chancellor” (e.g. “Vice-Chancellor and President” when on official duties in China).

Clause 158: Part 5 heading replaced

This clause deletes the heading to **Part 5 – Guild of Undergraduates** – and inserts instead:

Part 5 – Student Guild

The reason being that the Guild may include postgraduate students as well as undergraduates.

Clause 159: Section 28 amended

This clause amends **section 28 - Guild of Undergraduates**.

Subclause (1) continues the body corporate under the new name.

Subclause (2) inserts “Student” before each occurrence of “Guild” in subsections (2) and (2a).

Subclause (3) amends subsection (2c) by inserting “being or” before “not being”. The subsection would now read:

*No academic benefit, right or privilege shall be denied to or withheld from any enrolled student by reason of that student **being or** not being a member of the Student Guild.*

Subclause (4) inserts “Student” before “Guild” in subsection (4).

Subclause (5) deletes subsection (4) and inserts instead a contemporary phrasing of the existing section to the same effect.

Subclause (6) inserts “Student” before “Guild” in section 28(5), (6) and (7).

Clause 160: Section 28A replaced

This clause deletes and replaces **section 28A – Amenities and services fee**.

Replacement section 28A – Amenities and services fee – provides that a Statute may be made to provide for an annual amenities and services fee and (without limitation) the Statute may

prescribe or provide for the matters set out in subsections (1)(a) to (1)(f). It has been requested by the universities because it will enable them to respond to any commonwealth requirements that conflict with the requirements of the current section, such as a decision by a Federal Government to bar the charging of the fee. The replacement section enables the universities to adapt without the need to seek amendments to their Acts or to devise ‘work-around’ arrangements that might not be valid. In 2011 the Gillard Labor Government brought in the *Higher Education Legislation Amendment (Student Services and Amenities) Act* (Cth). The WA universities have found it difficult to comply simultaneously with the provisions of the State Acts and the Commonwealth Act. The specificity of the Commonwealth’s requirements about permissible usage of the funds sits uneasily with the State Acts which are not specific about purposes, referring only to Senates/Councils prescribing by Statute the processes for determining the “broad categories” of allowable Guild expenditure and for resolving disputes between the Senates/Councils and the Guilds in relation to that determination. The Commonwealth legislation does not contemplate “broad categories” of allowable expenditure; it is very specific on this matter. Student consultation is required under both the State and the Commonwealth legislation, but under the former it is aimed at determining the ‘broad categories’, and under the latter it is aimed at determining priorities among specific allowable services. There are no penalties in the State Acts for non-compliance with the provisions, but there are in the Commonwealth’s legislation. This new section makes it easier for the University to deal with any dual compliance difficulties. Subsection (2A) requires the Senate to pay to the Student Guild an amount that is not less than 50% of the total amount of the annual amenities and services fees collected.

The section **does not limit section 31 – Power to make Statutes –** and **overrides section 38 – Application of fees –** which provides that all fees received by the Senate shall be applied for the purposes of the University.

Clause 161: Section 28B amended

This clause amends **section 25B – Senate to include detail in Statute** – by inserting “Student” before each occurrence of “Guild” in the section. Sections 28A and 28B need to be read in conjunction with the requirements of section 19.43 of the Commonwealth’s Higher Education Support Act 2003, subsection (4) of which specifies 19 permissible services upon which the fee may be expended. This Commonwealth requirement circumscribes the University’s and Guild’s discretion under section 28B of the State Act, leaving little, if any room for dispute between the University Senate and the Student Guild.

Clause 162: Section 29 replaced

This clause replaces **section 29 – Instruction, degrees etc.** – and inserts instead **new section 29 – Courses of study and degrees.**

New section 29 is a contemporary re-statement of the existing section, with deletion of outdated references to matriculation and links to the United Kingdom.

Clause 163: Section 30 amended

This clause amends **section 30 – Examinations**. In section 30(2) gender neutrality is achieved and, in the same section “Governor” is replaced by “Minister”.

Clause 164: Section 31 amended

Subclause (1) deletes and replaces **section 31(1) – Power to make Statutes to be approved by Governor and published**.

Existing section 31(1) enables the Senate to make Statutes with respect to 24 specified matters. New section 31(1) retains, with some modification the power to make Statutes on 24 specified matters.

Existing section 31(2), (3), (4A), (4B) and (5) provide for Statutes passed by the Senate to be considered by Convocation for up to 3 months; for Convocation to draft proposed amendments; request the Senate to consider the amendments; require the Senate, if it declines the amendments, to give reasons for so doing and ask for a conference with Convocation and if possible come to an agreement. Failing to reach agreement, the Senate may forthwith make the Statute as proposed and have the matter reported in the University’s Annual Report to Parliament. **Subclause (2)** of this clause reduces the 3-month period in section 31(2) available to Convocation for consideration of Statutes to 28 days.

This clause deletes and replaces **section 33 – Approval, publication, disallowance and proof of Statutes** and inserts new section 34A – **Statutes to be readily available to the public**. Jointly, the provision the current provisions at section 33 for the making, approval by the Governor and Gazettal of Statutes and their disallowance by either House of Parliament. New section 33 requires University Statutes to be approved by the Governor and published in the *Gazette* before they can take effect. Once gazetted a Statute will have to be laid before each House of Parliament for possible disallowance. Once gazetted, a Statute is subject to the provisions of section 42 of the *Interpretation Act 1984*, as if the Statute were a regulation. Subsection (3) sets out what constitutes evidence of a Statute in court proceedings.

New section 34A requires the Senate to ensure that all its Statutes (ones made after commencement of replacement section 33 and those in force immediately before commencement) are readily available to the public by whatever means the Senate considers appropriate. Subsection (2) of the section provides that publication in the *Gazette* is not sufficient compliance with the requirement for

ready availability. Subsection (3) provides that subsection (1) ceases to apply when a Statute ceases to have effect; that is the spent Statute would be withdrawn from publication.

Clause 166: Section 34 amended

This clause amends **section 34 – Affiliated institutions** by deleting section 34 and replacing it with a contemporary re-statement of the existing provisions that enable the University to make Statutes for the affiliation to, or connection with, colleges or educational institutions. The amendment also deletes “boarding houses” and inserts instead “residential accommodation”.

Clause 167: Section 35 amended

Inserts gender neutrality to section 35(1).

Clause 168: Section 36 amended

This clause amends **section 36 – Exemption of property from taxation**.

Subclause (1) deletes “No tax or” from the lead-in to the section and inserts instead “(1) No” creating new subsection (1) which commences “No rate shall be charged or levied ...”

Subclause (2) inserts new subsection (2) which brings section 33 of the *Land Tax Assessment Act 2002* into play on questions of exemption or otherwise from land tax.

Clause 169: Section 37 deleted

This clause deletes **section 37 – Parliament may make appropriation to University** as a provision not enabled under the *Financial Management Act 2006* (or its predecessors).

Clause 170: Sections 39 and 40 deleted

This clause deletes **section 39 – No religious test** – and **section 40 – Privileges of Act to extend to women**.

Both sections have been superseded by subsequent Equal Opportunity legislation.

Clause 171: Section 42 deleted

Section 42 – Discharge of Trustees of University Endowment – is a spent provision.

Clause 172: Part 10 inserted.

This clause inserts after section 42:

**Part 10 – Transitional provisions for Universities Legislation
Amendment Act 2016**

New section 43 – Terms used: commencement day provides that in this Part “commencement day” means the day on which section 131 comes into operation.

New section 44 – Transitional provisions (Senate) provides for the transition from the membership of the Senate prior to

commencement day.

New Section 45 – Transitional provisions (Chancellor and Pro-Chancellor) provides for the continuation in office of the Chancellor and Pro-Chancellor.

New section 46 - Transitional provisions (guarantees) provides that a guarantee given under current section 15B and in force immediately before commencement day continues as if it had been given under new section 15D.

New section 48 - Transitional provisions (by-laws) provides that new section 16B(2) does not apply to by-laws made and published before commencement day and also not to by-laws made but not yet published in the Gazette before commencement day. Former section 16B applies instead.

New section 48 - Transitional provisions (Statutes) provides that new section 33(2) does not apply to Statutes made and published before commencement day and also not to Statutes made but not yet published in the Gazette before commencement day. Former section 33 applies instead.

Clause 173: Schedule 1 clause 5 deleted

This clause deletes **Schedule 1 clause 5 – Quorum where cl. 3 applies** – which determines the quorum of a Council meeting considering a matter if by Schedule 1 clause (3) a member is disqualified in relation to the matter. While the deleted provision enabled a smaller quorum in the circumstances, the University takes the more conservative view that the ordinary quorum provision (section 25 of the UWA Act) should be used even where there are conflicting interests under clause 3.

Clause 174: Schedule 1 clause 6 amended

This clause amends **Schedule 1 clause 6 – Minister may declare clauses 3 and 5 inapplicable** - by deleting reference in subclause (1) to clause 5 which is deleted by clause 173 of the Bill (above).

Part 7 – Amendments to and repeal of other Acts

Division 1 – Acts repealed

Clause 175: *Murdoch University Planning Board Act 1970* repealed

The provisions of this Act are spent and thus it is being repealed.

Clause 176: *Reserves (University Lands) Act 1972* repealed

The provisions of this Act are spent and thus it is being repealed

Division 2 – *Animal Resources Authority Act 1981* amended

Clause 177: Act amended

This Division amends the *Animal Resources Authority Act 1981*

Clause 178: Section 5 amended

Section 5(2)(b)(iii) is deleted and replaced by “Curtin University – 1 person”. Consequent to change of name from “Curtin University of

Technology" to "Curtin University".

Clause 179: Section 17 amended

Consequent to change of name from "Curtin University of Technology" to "Curtin University".

Division 3 – *Financial Management Act 2006* amended

Clause 180: Act amended

This Division amends the *Financial Management Act 2006*

Clause 181: Schedule 1 amended

Consequent to change of name from "Curtin University of Technology" to "Curtin University".

Division 4 – *Industrial Relations Act 1979* amended

Clause 182: Act amended

This Division amends the *Industrial Relations Act 1979*.

Clause 183: Section 7 amended

Consequent to change of name from "*Curtin University of Technology Act 1966*" to "*Curtin University Act 1966*".

Division 5 – *Land Tax Assessment Act 2002* amended

Clause 184: Act amended

This Division amends the *Land Tax Assessment Act 2002*.

Clause 185: Section 33 amended

This clause amends section 33(4) by (a) deleting reference to "the Curtin University of Technology..." and inserting instead "Curtin University ..." and (b) deleting "the" from "the Edith Cowan University established ..."

Clause 186: Section 44 deleted

This clause deletes **section 44 – University land, Act applies to**.
The effect of provisions of the deleted section, which are to the effect that the Act applies despite any provision to the contrary in any of the Acts of the public universities, is now incorporated in the university Acts themselves.

Division 6 – *Oaths, Affidavits and Statutory Declarations Act 2005* amended

Clause 187: Act amended

This Division amends the *Oaths, Affidavits and Statutory Declarations Act 2005*.

Clause 188: Schedule 2 amended

Consequent to change of name from "*Curtin University of Technology Act 1966*" to "*Curtin University Act 1966*".

Division 7 – *Public Sector Management Act 1994* amended

Clause 189: Act amended

This Division amends the *Public Sector Management Act 1994*.

Clause 190: Schedule 1 amended

Consequent to change of name from “*Curtin University of Technology Act 1966*” to “*Curtin University Act 1966*”

Division 8 – *Salaries and Allowance Act 1975* amended

Clause 191: Act amended

This Division amends the **Salaries and Allowance Act 1975**.

Clause 192: Section 6 amended

Subclause (1)(a) inserts (ea) after section 6(1)(d) specific references to the university bodies whose members are eligible for remuneration and allowances.

Subclause (2) inserts “and” after each of the subsection (1)(a) to (c) and (2)(a).

Clause 193: Section 10 amended

Inserts a provision that enables the appointment of a person from time to time to assist the Tribunal in relation to new subsection 6(1)(ea) inserted by clause 194 above.

Division 9 – *Sentencing Act 1995* amended

Clause 194: Act amended

This Division amends the *Sentencing Act 1995*.

Clause 195: Act amended

Consequent to change of name from “*Curtin University of Technology Act 1966*” to “*Curtin University Act 1966*”

Division 10 – *Superannuation and Family Benefits Act 1938* amended

Clause 196: Act amended

This Division amends the *Superannuation and Family Benefits Act 1938*.

Clause 197: Section 67 amended

Consequent to change of name from “*Curtin University of Technology Act 1966*” to “*Curtin University Act 1966*”