

ACTS AMENDMENT (STUDENT GUILDS AND ASSOCIATIONS) BILL 2002

EXPLANATORY MEMORANDUM

PART 1

Preliminary

Section 1 Provides for this Act to be called the Acts Amendment (Student Guilds and Associations) Act 2002.

Section 2 The commencement day of the Act to be determined by proclamation.

PART 2

Curtin University of Technology Act 1966 amended

Section 3 Amendments in this part are to the Curtin University of Technology Act 1966.

Section 4

- (1) Provides that the Student Guild shall be the recognised means of communication between enrolled students and the Council in accordance with any Statutes that the Council makes.
- (2) The deleted subsection is covered in further amendments.
- (3) Subsections 5,6 and 7 are repealed. Subsection 5 is repealed as the substance of the subsection is incorporated in further amendments. Subsections 6 and 7 are repealed as these subsections were added by the Voluntary Membership of Student Guilds and Associations Act 1994 and deal with specific statements that it is not compulsory to be a member of the Student Guild or to pay a fee or subscription either to the Student Guild or to the University. These subsections were replaced by the following provisions:
 - Any student is eligible to be a member of the Student Guild.
 - Subject to subsection (7), a student becomes a member of the Student Guild upon enrolment, for the period of enrolment.
 - (subsection 7) - A student may elect at the time of enrolment not to become a member of the Student Guild, and an enrolled student may resign at any time as a member of the Student Guild.
 - An enrolled student cannot hold an elective office of the Student Guild unless that enrolled student is a member of the Student Guild.

(The University and their Student Guild adhere to current practice outlined in Statutes that all students can vote in Student Guild elections).
- (4) Following subsection 8 which provides that 'no academic benefit, right or privilege shall be denied to or withheld from any enrolled student by

reason of that student not being a member of the Student Guild'; a new subsection (9) is added which provides that the University shall not act in a way that may dissuade or discourage an enrolled student, or person seeking enrolment as a student, from being or becoming a member of the Student Guild.

- (5) Subsections 16 and 17 which deal previously with payments to the Student Guild are repealed.

Section 5

Sections in the current Act dealing with the prohibition that the University and the Student Guild may not accept certain Commonwealth grants are repealed and replaced by Section 45 dealing with the amenities and services fee and Section 46 which provides for Council to include detail in Statute.

Amenities and services fee

- An annual amenities and services fee shall be set at an amount approved by the Council after receiving a report from, and a recommendation by, the Student Guild.
- The Council may determine that a different level of the amenities and services fee is payable by a specified class of enrolled students.
- The amenities and services fee is payable to the Council by each enrolled student, except a student exempted from doing so, or made ineligible to do so, by Statute.
- The Council shall pay to the Student Guild a percentage of the amenities and services fees collected that is not less than the percentage of enrolled students that are members of the Student Guild.
- Regardless of the number of enrolled students who are members of the Student Guild, the percentage of the collected amenities and services fee paid to the Student Guild must exceed 50% of those fees.
- The part of the amenities and services fee not paid to the Student Guild is to be spent on student amenities and services in the manner agreed by Council and the Student Guild.

Council to include detail in Statute

- (1) Council shall define, by Statute-
 - (a) broad areas of amenities and services to which the Student Guild may apply the fees paid to it; and
 - (b) processes for resolving disputes that might arise in the course of defining those areas.
- (2) Council shall prescribe, by Statute, the measures by which the Student Guild is to account for the fees received, and those measures shall include-
 - (a) a requirement that the annual financial statements of the Student Guild are to be audited by an independent external auditor whose appointment requires Council approval; and

- (b) a requirement for the Student Guild to provide a copy of each audited balance sheet, and an annual statement of the Student Guild's income and expenditure, to the Council.
- (3) The Council shall prescribe, by Statute, the process for reaching agreement between the Council and the Student Guild about the expenditure of the part of the amenities and services fee not paid to the Student Guild.

PART 3

Edith Cowan University Act 1984 amended

Section 6 Amendments in this part are to the Edith Cowan University Act 1984.

Section 7 (1) Provides that the Student Guild shall be the recognised means of communication between its members and the Council in accordance with any Statutes that the Council makes.

(Edith Cowan University with the agreement of its Student Guild regard the Guild as the recognised means of communication between its members and the Council)

(2) Provides that subject to the qualifications for membership prescribed by Statute any enrolled student is eligible to be a member of the Student Guild.

(3) Subsections 6 and 6(a) are repealed. These subsections were added by the Voluntary Membership of Student Guilds and Associations Act 1994 and deal with specific statements that it is not compulsory to be a member of the Student Guild or to pay a fee or subscription either to the Student Guild or to the University. They were replaced by the following provisions:

- A student becomes a member of the Student Guild upon enrolment, for the period of enrolment, unless-
 - (a) at the time of enrolment that student elects not to become a member; or
 - (b) the enrolled student is not eligible to be a member.
- An enrolled student may resign at any time as a member of the Student Guild.
- In addition, subsection (6b) is retained which provides that no academic benefit, right or privilege shall be denied to or withheld from any enrolled student by reason of that student not being a member of the Student Guild;

- (4) Subsections 7 and 8 which deal with payments to the Student Guild are repealed. A subsection is inserted which provides that an enrolled student (whether a member of the Student Guild or not) may vote in an election held to fill a vacancy in a Student Guild Office, but an enrolled student cannot hold an elective office unless that enrolled student is a member of the Student Guild.

(All Universities have existing practices in regard to voting in Guild elections, which are incorporated in Statutes. Each University has decided to adhere to the current practice at their University and as a result there is some variation in approach to the question of who may vote in an election. UWA for example take the approach that all students should vote in Guild elections as the Guild represents all students in terms of its formal representational role in university governance.

All universities, however, agree that an enrolled student cannot hold an elective office of the Student Guild unless that enrolled student is a member of the Student Guild).

- (5) Subsection 10 dealing with a definition of the Student Guild is deleted.

Section 8

Sections dealing with the prohibition incorporated in the Voluntary Membership of Student Guilds and Associations Act 1994 that the University and the Student Guild may not accept certain Commonwealth grants are repealed and replaced by Section 41A dealing with the amenities and services fee and Section 41B which provides for Council to include detail in Statute.

Amenities and services fee

- An annual amenities and services fee shall be set at an amount approved by the Council after receiving a report from, and a recommendation by, the Student Guild.
- The Council may determine that a different level of the amenities and services fee is payable by a specified class of enrolled students.
- The amenities and services fee is payable to the Council by each enrolled student, except a student exempted from doing so, or made ineligible to do so, by Statute.
- The Council shall pay to the Student Guild a percentage of the amenities and services fees collected that is not less than the percentage of enrolled students that are members of the Student Guild.
- Regardless of the number of enrolled students who are members of the Student Guild, the percentage of the collected amenities and services fee paid to the Student Guild must exceed 50% of those fees.

Council to include detail in Statute

- The Council shall specify, by Statute, the broad categories of amenities and services within which the fees collected may be expended.

- The fees collected each year are to be allocated to broad categories of expenditure under an agreement between the Council and the Student Guild, and the Council shall prescribe, by Statute, the processes for -
 - (a) determining the broad categories of amenities and services within which the fees are to be expended; and
 - (b) resolving disputes that arise in the process of those determinations.
- The Council shall prescribe, by Statute, the measures by which the Student Guild is to account for the fees received, and those measures shall include-
 - (a) a requirement that the annual financial statements of the Student Guild are to be audited by an independent external auditor whose appointment requires Council approval; and
 - (b) a requirement for the Student Guild to provide a copy of each audited balance sheet, and an annual statement of the Student Guild's income and expenditure, to the Council.

PART 4

Murdoch University Act 1973 amended

Section 9 Amendments in this part are to the Murdoch University Act 1973

- Section 10**
- (1) Provides that the Guild shall be the recognised means of communication between students and the Senate, in accordance with any Statutes that the Senate makes.
 - (2) Subsections 2a, 2b ,and 2c are repealed. Subsection 2a is repealed as the substance of the subsection is incorporated in further amendments. Subsections 2b and 2c are repealed as these subsections were added by the Voluntary Membership of Student Guilds and Associations Act 1994 and deal with specific statements that it is not compulsory to be a member of the Student Guild or to pay a fee or subscription either to the Student Guild or to the University. They are replaced by the following provisions:
 - Any student is eligible to be a member of the Guild.
 - The University shall not act in any way that may dissuade or discourage a student, or person seeking enrolment as a student, from being or becoming a member of the Guild.

(An existing subsection is retained which provides that ‘no academic benefit, right or privilege shall be denied to or withheld from any enrolled student by reason of that student not being a member of the Student Guild.’)
 - (3) Subsections 5,6, and 8 are inserted and provide as follows:

- As student becomes a member of the Guild upon enrolment, for the period of enrolment, unless at the time of enrolment that student elects not to become a member.
- Subject to subsection (7), a student becomes a member of the Guild upon enrolment, for the period of enrolment.
- Subsection (7) provides that a student may-
 - (a) elect at the time of enrolment not to become a member of the Guild; and
 - (b) resign at any time as a member of the Guild.
- A student cannot hold an elective office of the Guild unless that student is a member of the Guild.

(The University and its Guild take the position which is outlined in Statutes that only Guild members may vote in Guild elections).

- Subsections 11 and 12 which deal with subscriptions paid to the Guild are repealed. The matters of an amenities and services fee are covered in Section 20A of the Murdoch University Act.

Section 11

Sections dealing with the prohibition incorporated in the Voluntary Membership of Student Guilds and Associations Act 1994 that the University and the Guild may not accept certain Commonwealth grants are repealed and replaced by Sections dealing with the amenities and services fee and provisions for Senate to include detail in Statute.

Amenities and services fee

- An annual amenities and services fee shall be set at an amount approved by the Senate after receiving a report from and a recommendation by, the Guild.
- The Senate may determine that a different level of the amenities and services fee is payable by a specified class of enrolled students.
- The amenities and services fee is payable to the Senate by each student, except a student exempted from doing so, or made ineligible to do so, by Statute.
- The Senate shall pay to the Guild a percentage of the amenities and services fees collected that is not less than the percentage of students that are members of the Guild.
- Regardless of the number of students who are members of the Guild, the percentage of the collected amenities and services fee paid to the Guild must exceed 50% of those fees.
- The part of the amenities and services fee not paid to the Guild is to be spent on student amenities and services in the manner agreed by the Senate and the Guild.

Senate to include detail in Statute

- The Senate shall specify, by Statute, the broad areas of amenities and services to which the Guild may apply the fees paid to it.
- The Senate shall prescribe, by Statute, the processes for -
 - (a) determining the broad categories of amenities and services to which the Guild may apply the fees; and
 - (b) resolving disputes that arise in the process of those determinations.
- The Senate shall prescribe, by Statute, the measures by which the Guild is to account for the fees received, and those measures shall include-
 - (a) a requirement that the annual financial statements of the Guild are to be audited by an independent external auditor whose appointment requires Senate approval; and
 - (b) a requirement for the Guild to provide a copy of each audited balance sheet, and an annual statement of the Guild's income and expenditure, to the Senate.
- The Senate shall prescribe, by Statute, the process for reaching agreement between the Senate and the Guild about the expenditure of the part of the amenities and services fee not paid to the Guild.

PART 5

University of Notre Dame Australia Act 1989 amended

Section 12 Amendments in this part are to the University of Notre Dame Australia Act 1989.

Section 13 Part 8 dealing with Student associations is repealed.

(As a private university, the University of Notre Dame Australia's Act is very different to those of the public universities. Prior to the Voluntary Membership of Student Guilds and Associations Act 1994 no provision was required to be made for Guilds or student associations in their legislation. It is therefore proposed that the 1994 amendments be simply repealed in the University of Notre Dame Australia Act 1989).

PART 6

University of Western Australia Act 1911 amended

Section 14 Amendments in this part are to the University of Western Australia Act 1911.

Section 15 Section dealing with definitions is amended to insert a definition for 'Guild' and a definition for 'student'.

Section 16 (1) Subsections 2, 2a and 2b are repealed. Subsection 2 is repealed as the substance of the subsection is incorporated in further amendments. Subsections 2a and 2b are repealed as these subsections were added by

the Voluntary Membership of Student Guilds and Associations Act 1994 and deal with specific statements that it is not compulsory to be a member of the Guild or to pay a fee or subscription either to the Guild or to the University. They were replaced by the following provisions:

- Any student is eligible to be a member of the Guild.
 - The University shall not act in any way that may dissuade or discourage a student, or person seeking enrolment as a student, from being or becoming a member of the Guild.
 - Subsection (2c) provides that 'no academic benefit, right or privilege shall be denied to or withheld from any student by reason of that student not being a member of the Guild'.
- (2) Subsection 3 is amended to provide that the Guild shall be the recognised means of communication between students and the governing authority of the University in accordance with such Statutes as the governing authority may prescribe.
- (3) After subsection 4 the following subsections are inserted-
- Subject to subsection (6), a student becomes a member of the Guild upon enrolment, for the period of enrolment.
 - Subsection (6) provides that a student may-
 - (a) elect at the time of enrolment not to become a member of the Guild; and
 - (b) resign at any time as a member of the Guild.
 - A student cannot hold an elective office of the Guild unless that student is a member of the Guild.

(The current practice at UWA is that all students vote in Guild elections. The rationale being that the Guild represents all students in terms of its formal representational role in University governance).

- (4) Subsections 9 and 10 and 11 are repealed. Subsections 9 and 10 deal with subscriptions paid to the Guild and Guild subscriptions are now replaced by a student amenities and services fee. Subsection 11 dealing with definitions is now included in Section 2 of the Act.

Section 17 Sections dealing with the prohibition incorporated in the Voluntary Membership of Student Guilds and Associations Act 1994 that the University and the Guild may not accept certain Commonwealth grants are repealed and replaced by sections dealing with the amenities and services fee and provisions for Senate to include detail in Statute.

Amenities and services fee

- An annual amenities and services fee shall be set at an amount approved by the Senate after receiving a report from, and a recommendation by, the Guild.
- The Senate may determine that a different level of the amenities and services fee is payable by a specified class of students.
- The amenities and services fee is payable to the Senate by each student, except a student exempted from doing so, or made ineligible to do so, by Statute.
- The Senate shall pay to the Guild a percentage of the amenities and services fees collected that is not less than the percentage of students that are members of the Guild.
- Regardless of the number of students who are members of the Guild, the percentage of the collected amenities and services fee paid to the Guild must exceed 50% of those fees.
- The part of the amenities and services fee not paid to the Guild is to be spent on student amenities and services in the manner determined by Senate after consultation with the Guild.

(UWA and their Guild take the view that the UWA Senate, as the governing body, is the appropriate authority for determining fee levels and distributions, under an appropriate Statute, having consulted with the Guild).

Senate to include detail in Statute

- The Senate shall specify, by Statute, the broad areas of amenities and services to which the Guild may apply the fees paid to it.
- The Senate shall prescribe, by Statute, the processes for determining the broad categories of amenities and services to which the Guild may apply the fees.

(The University and their Guild consider that with only one final point of decision making any conflict resolution process would be redundant).

- The Senate shall prescribe, by Statute, the measures by which the Guild is to account for the fees received, and those measures shall include-
 - (a) a requirement that the annual financial statements of the Guild are to be audited by an independent external auditor whose appointment requires Senate approval; and
 - (b) a requirement for the Guild to provide a copy of each audited balance sheet, and an annual statement of the Guild's income and expenditure, to the Senate.