Report 18

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Curtin University Statute No. 5 – Election of Council Members and Curtin University Statute No. 12 – Admission and Enrolment

Presented by
Ms Emily Hamilton MLA (Chair)
and
Hon Robin Chapple MLC (Deputy Chair)
November 2020
Joint Standing Committee on Delegated Legislation

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Government response

This report is subject to Standing Order 191(1): Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The two-month period commences on the date of tabling.
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EXECUTIVE SUMMARY

1. On 11 August 2020, the following subsidiary legislation was tabled in the Legislative Council:
   - Curtin University Statute No. 5 – Election of Council Members (Statute 5)
   - Curtin University Statute No. 12 – Admission and Enrolment (Statute 12).

2. The Statutes were tabled in the Legislative Council on 11 August 2020 and, upon being laid before the House, became instruments that may be subject to disallowance.

3. The Statutes were made pursuant to the Curtin University Act 1966 (Act).

4. The Act creates a hierarchy of regulation, as follows:
   - Firstly, the University Council may make Statutes about the matters set out in section 34 and other sections of the Act. Statutes must be approved by the Governor, published in the Government Gazette and laid before Parliament. Statutes are subject to disallowance, demonstrating Parliament’s intention to subject the contents of Statutes to Parliamentary scrutiny.
   - Secondly, the University Council may make rules under a Statute. Rules are not approved by the Governor and are not subject to disallowance and, in the Committee’s view, are subsidiary to Statutes.

Statute No. 5 – Election of Council Members

5. Section 9(c)–(f) of the Act expressly require Statutes (which are disallowable by Parliament) to prescribe the manner of electing members of Council. However, Statute 5 fails to prescribe any such detail, and instead provides that all matters will be set out in the rules (which are not disallowable by Parliament).

6. The requirement for the matters set out in section 9(c)–(f) of the Act to be prescribed in Statute, approved by the Governor and published, coupled with the provisions making the Statutes disallowable clearly signify Parliament’s intention that the manner in which the members of the Council are elected is to be subject to Parliamentary scrutiny.

7. By electing to authorise the subject matter of section 9(c)–(f) in rules rather than prescribing it in a Statute, the University is in effect avoiding the scrutiny of the Parliament.

8. The Committee recommends that Statute 5 be disallowed.

Statute No. 12 – Admission and Enrolment

9. The Committee resolved to not recommend disallowance of Statute 12, but to prepare an information report, using Statute 12 as a case study, to outline the issues in the Act which, the Committee considers, require the attention of the Parliament.

10. The Committee recognises there are two competing interpretations of section 34(3) of the Act (the provision which authorises the making of rules). This report details the Committee’s position and Curtin University’s competing position.

11. On the Committee’s purposive reading of the Act as a whole, matters which the Act specifies may be set out in Statute are matters intended to be subject to Parliamentary scrutiny. Therefore, these matters should be substantially set out in Statute, with rules providing administrative or ancillary detail only. Any other interpretation would result in an outcome where Curtin University decides which matters are disallowable by the Parliament, and therefore, which subject matter the Parliament has the opportunity to scrutinise.
12 Curtin University’s position is that a literal reading of section 34(3)(a) should be adopted and that upon such a reading:

• there is no requirement for the matters in section 34(1) to be set out in any substantial way in Statute (even where the Act contemplates that certain matters will be set out in Statute)
• Statutes can be made solely for the purpose of authorising rules
• rules may be made about any subject matter which the Act authorises Statutes to be made.

13 The Committee is concerned about Curtin University’s interpretation of the Act, which results in Curtin University, rather than Parliament, deciding which material will be scrutinised by Parliament.

14 The issue for further consideration is whether the Act intends to provide Curtin University with a discretion to determine whether subject matters set out in section 34 of the Act should be subject to disallowance.

**Findings and recommendations**

Findings and recommendations are grouped as they appear in the text at the page number indicated:

**FINDING 1**

The making of a Statute which provides for the subject matter in sections 9(1)(c)-(f) of the *Curtin University Act 1966* to be set out in rules is not authorised by that Act.

**RECOMMENDATION 1**

*Curtin University Statute No. 5 – Election of Council Members* be disallowed.

**FINDING 2**

Section 34(3) of the *Curtin University Act 1966* should be amended to clarify the Parliament’s intention in relation to the scrutiny and disallowance of Statutes and rules.

**RECOMMENDATION 2**

The Parliament provide clarity as to whether the *Curtin University Act 1966* was intended to operate to provide Curtin University with a discretion to determine whether subject matters set out in section 34 of the *Curtin University Act 1966* should be subject to disallowance.
CHAPTER 1
Introduction

Background
1.1 On 24 July 2020, the following subsidiary legislation was published in the Government Gazette:
   - Curtin University Statute No. 5 – Election of Council Members (Statute 5) (Appendix 1)
   - Curtin University Statute No. 12 – Admission and Enrolment (Statute 12) (Appendix 2)
(taken together, the University Statutes).

1.2 The University Statutes were tabled in the Legislative Council on 11 August 2020 and, upon being laid before the House, became instruments that may be subject to disallowance.¹

Legislative framework of Curtin University

Curtin University Act 1966
1.3 Curtin University (Curtin) was established under the Western Australian Institute of Technology Act 1966, now known as the Curtin University Act 1966 (Act).

1.4 Curtin is established as a body-corporate by the Act.²

1.5 The Act gives Curtin:
   all such powers, rights and privileges as are reasonably necessary to enable it to carry out its functions.³

1.6 Curtin’s functions include, but are not limited to, providing courses of study appropriate to a university and to encourage and participate in the development and improvement of tertiary education.⁴

1.7 The University Council (Council) is the governing authority of Curtin University.⁵

1.8 The required constitution of the Council is set out in the Act and must consist of the following members:
   - three persons appointed by the Governor on the recommendation of the Minister
   - the person for the time being holding the office of Vice-Chancellor
   - one person who is a member of the academic staff of Curtin and who is elected by the academic staff of Curtin in the manner prescribed by Statute
   - two persons who are enrolled students:
     - one of whom is an undergraduate student and who is elected by the undergraduate students in the manner prescribed by Statute

¹ Interpretation Act 1984, s 42(1) and (2).
² Curtin University Act 1966 s 5.
³ ibid., s 7(2).
⁴ ibid., s 7(1)(a)–(b).
⁵ ibid., s 8.
one of whom is a postgraduate student and who is elected by the postgraduate students in the manner prescribed by Statute

- one person who is a member of the non-academic salaried staff of Curtin, and who is elected by the non-academic salaried staff of Curtin in the manner prescribed by Statute
- two persons who are graduates of Curtin and who are elected by the graduates of Curtin in the manner prescribed by Statute
- the person who, not being a member of the Council at the time of their appointment as Chancellor, is appointed as Chancellor
- not more than five persons appointed from time to time by co-option by the Council, but a person whose sole or principal employment is that of a member of the staff of Curtin may not be so appointed
- the person for the time being the chairperson of the Academic Board of the University established by Statute.6

**Power to make Statutes**

1.9 Section 34 of the Act is attached as Appendix 3 of this report.

1.10 Section 34(1) of the Act authorises the Council to make subsidiary legislation referred to as ‘Statutes’. Specifically, section 34(1) of the Act states:

> The Council may make Statutes, not inconsistent with this Act, with respect to all matters pertaining to the University ...7

1.11 Section 34 details a range of matters that Curtin may make Statutes with respect to, including but not limited to:

- the use and custody of the common seal8
- the entrance standards for students9
- the granting of appropriate degrees, diplomas and certificates of honorary awards10
- the admission of graduates and students of other educational institutions to any corresponding status in the University without examination11
- the recognition, instead of or for the purpose of any examination or course of study, of any course of study completed or examination passed in any educational institution12
- fees13
- residential accommodation for staff and enrolled students14
- control and investment of the property of the University15

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6 ibid., s 9(1)(a)–(i).
7 See Appendix 3.
8 Curtin University Act 1966, ss 34(1)(b).
9 ibid., s 34(1)(f).
10 ibid., s 34(1)(g).
11 ibid., s 34(1)(j).
12 ibid., s 34(1)(k).
13 ibid., s 34(1)(i).
14 ibid., ss 34(1)(la)–(m).
15 ibid., s 34(1)(n)
any other matter authorised or directed by the Act to be prescribed by Statute.\(^{16}\)

1.12 A Statute made by the Council must be sealed with the common seal of the University, submitted to the Governor for approval and if approved, published in the Government Gazette. A Statute takes effect on the day after publication in the Government Gazette, unless otherwise specified in the Statute.\(^{17}\)

**Statutes are subject to Parliamentary Scrutiny**

1.13 Section 35(2) of the Act makes Statutes subject to section 42 of the *Interpretation Act 1984*.\(^{18}\) This has the effect of making Statutes subject to the scrutiny of the Parliament and to disallowance.\(^{19}\)

**Power to make rules**

1.14 Section 34 also authorises the Council make ‘rules’ under the Statutes.

1.15 Section 34(3)(a) of the Act authorises Statutes to provide for:

empowering the Council of the University to make rules, not inconsistent with this Act or with any Statute for regulating or providing for the regulation of, any specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes, and any of those rules shall have the same force and effect as a Statute ...\(^{20}\)

**Rules are not subject to Parliamentary scrutiny**

1.16 In contrast to Statutes, rules do not require approval by the Governor. Rules are made in any manner chosen by the University. The current requirement is for rules to be made by resolution of the Council.\(^{21}\)

1.17 Unlike Statutes, rules are not published in the Government Gazette. The Act authorises Statutes to provide for the manner of promulgation of rules.\(^{22}\) Curtin has authorised rules to be promulgated by being published on the University website\(^{23}\) or by whatever other means (if any) the Council determines to be appropriate.\(^{24}\)

1.18 Rules also differ from Statutes in that they are not laid before the Houses of Parliament. Therefore, rules are not subject to Parliamentary scrutiny or the disallowance provisions of the Act.

\(^{16}\) ibid., s 34(1)(o).

\(^{17}\) ibid., ss 35(1)(a)–(d).

\(^{18}\) ‘The *Interpretation Act 1984* section 42 applies to a Statute approved and published under section (1) as if the Statute were a regulation’: ibid., s 35(2).

\(^{19}\) ‘If either House of Parliament passes a resolution disallowing any regulations of which resolution notice has been given within 14 sitting days of such House after such regulations have been laid before it, such regulations shall thereupon cease to have effect’: *Interpretation Act 1984* s 42(2).

\(^{20}\) *Curtin University Act 1966* s 34(3).

\(^{21}\) *Curtin University, Statute 3 – Rules and By-Laws*, as published in the Government Gazette on 26 June 2018, cl 6(1)(a).

\(^{22}\) *Curtin University Act 1966*, s 34(3)(b).

\(^{23}\) *Curtin University, Statute 3 – Rules and By-Laws*, as published in the Government Gazette on 26 June 2018, cl 6(1)(c)(i).

\(^{24}\) ibid., cl 6(1)(c)(ii).
1.19 Section 20A of the Act authorises Curtin to make by-laws for the purpose of managing, preserving and protecting University land and for the purpose of regulating the terms and conditions on which such lands may be visited.  

1.20 Section 20A sets out the matters which may be regulated via by-laws, such as prohibiting and regulating the admission to University land of persons, vehicles or animals; prohibiting offensive or abusive behaviour on University land and prohibiting damage, injury or interference with University lands.

1.21 ‘University land’ is defined as the land set out in Schedule 1 of the Act, land leased to or by Curtin, and all buildings and structures on University land.

1.22 By-laws must be approved by the Governor, but are not required to be published in the Government Gazette. By-laws are not disallowable by the Parliament.

**Scrutiny of the University Statutes**

1.23 The Joint Standing Committee on Delegated Legislation (Committee) received copies of the University Statutes and an Explanatory Memorandum from the Minister once the University Statutes were published in the Government Gazette.

1.24 The Committee first considered the University Statutes at its meeting of 23 September 2020.
1.25 The Committee identified that Statute 5 did not prescribe the manner in which Council members are to be elected, as required by sections 9(1)(c)–(f) of the Act, but rather provided for that function to be set out in rules.

1.26 The Committee further identified that Statute 12 did not regulate the entrance standards for students or admission of graduates and students of other educational institutions, as required by sections 34(1)(f) and (j) of the Act, but rather provided for such requirements to be set out in rules.

1.27 At its meeting on 23 September 2020, the Committee resolved to:
- write to Hon Sue Ellery MLC, Minister for Education and Training (Minister)
- give notice of motion to disallow the University Statutes in the Legislative Council to protect Parliament’s right to disallow the University Statutes should the Committee recommend disallowance.

1.28 On 24 September 2020, the Committee wrote to the Minister outlining the issues identified by the Committee and asking:
- why are the substantial matters set out in rules rather than the Statutes?
- what legal basis has Curtin relied upon in setting out the matters in rules rather than Statutes?

1.29 On 23 October 2020, the Committee received responses from the Minister in relation to Statute 5 (Minister Letter 1) and Statute 12 (Minister Letter 2) which are annexed to this report as Appendix 4 and 5 respectively and discussed below.32

1.30 At the Committee’s meeting of 4 November 2020, the Committee resolved to:
- recommend disallowance of Statute 5
- provide an information report to Parliament in relation to Statute 12.

**Effect of disallowance**

1.31 The effect of disallowance is that Statute 5 will cease to have effect.33

1.32 If Parliament disallows Statute 5, the previous Statutes (repealed by Statute 5) will be revived on the day after disallowance.34

1.33 Disallowance does not affect the validity of any action taken on the basis of the disallowed Statute 5 in the period between its commencement and disallowance.35

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33 *Interpretation Act 1984*, s 42(2).
34 ibid., s 42(6).
35 ibid., s 42(2).
CHAPTER 2
Curtin University, Statute No. 5 – Election of Council Members

Effect of Statute 5 – Election of Council Members

2.1 Sections 9(1)(c)–(f) of the Act require the manner of electing Council members to be prescribed by Statute.

2.2 Statute 5 is attached as Appendix 1 to this report.36

2.3 The Explanatory Memorandum for Statute 5 provided to the Committee by the Minister on 11 August 2020 advises:

The replacement Statute 5 states the purpose of the Statute – to establish a framework for the election of those Council members who are elected members.37

2.4 Clause 3 of Statute 5 states:

The purpose of this Statute is to establish a framework for the election of those Council members who are elected members.

2.5 Although Statute 5 purports to contain a framework for the election of Council members,38 it fails to do so.

2.6 Statute 5 does not set out any detail about the manner in which elected members will be elected. Instead, Statute 5 provides that the rules will contain such details. Specifically, clause 5 of Statute 5 states:

The Council may make rules, not inconsistent with the Act or any Statute—

(a) to regulate, or provide for the regulation of, the election of those Council members who are elected members; and

(b) to carry out or give effect to this Statute.

2.7 Clause 5 is the only ‘substantive’ clause in Statute 5.

2.8 In the Committee’s view, the content of Statute 5 does not prescribe the manner in which members are to be elected and it does not provide any substantive framework or principles for the rules to carry out or give effect to.

2.9 Statute 5 repeals the following Statutes:

• previous Statute No. 5 – Election of Staff Members to the Council, which came into force on 23 September 2005 (Previous Statute 5)39
• previous Statute No. 9 – Election of Student Members to the Council, which came into force on 16 September 2005.40

36 See Appendix 1.
37 Explanatory Memorandum, Curtin University Statute No. 5 – Election of Council Members, p 1.
38 Curtin University, Curtin University Statute No. 5 – Election of Council Members, cl 3 as published in the Government Gazette on 24 July 2020 (see Appendix 1).
39 ibid., cl 6.
40 ibid.
2.10  Previous Statute 5, correctly in the Committee's view, did set out the manner in which Council members were to be elected. Previous Statute 5 contained the following details, which have been deleted from the current Statute 5:

- the electoral roll for the purposes of Council elections
- who is eligible to nominate a candidate, be nominated as a candidate and vote
- notice of elections and when notice must be given
- how nominations should be made and the period nominations shall remain open
- when elections shall be held
- the process of sending information and ballot papers to each elector
- when the ballot closes
- appointment of scrutineers
- the system of voting as the optional preferential system
- the process of counting votes
- when the successful candidates will be declared and the process of notification of the results.41

**Response from Minister—Statute No. 5 – Election of Council Members**

2.11  On 23 October 2020, the Committee received Minister Letter 1, advising the Committee that:

> These matters raise significant doubts about whether the election of Council members is a matter which can be substantively prescribed by rules rather than by Statute. On balance, and while the matter is not beyond doubt, after considering the concerns raised by the Committee I consider that the manner of electing Council members should be substantively addressed in a Statute and not by rules.

... Curtin does not concede that Statute No. 5 is invalid in its current form. However, in light of the concerns raised by the Committee and the doubts expressed above, Curtin’s Council will be asked to revoke Statute No. 5 and make a new Statute No. 5 so that matters currently dealt with by rules are incorporated in the Statute. Curtin expects that the matter will be considered by the Council at its December meeting.

... I respectfully request that the Committee postpone further consideration of Statute No 5 until a suitable date in the New Year, so that the Committee can be informed of the outcome of the Council’s December meeting before it deliberates further on Statute No 5.42

2.12  Minister Letter 1 encloses a letter from the Vice-Chancellor of Curtin University. In the letter, the Vice-Chancellor takes the following position:

> Under the Curtin Act, it is for the University to determine whether the regulation of the election processes under section 9(1)(c)–(f) of the Curtin Act are to be effected

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41  Curtin University, *Statute No. 5 – Election of Staff Members to the Council* as published in the Government Gazette on 27 May 2005.

42  Hon Sue Ellery MLC, Minister for Education and Training, Letter, 23 October 2020, p 2 (See Appendix 4).
by way of Statute or by way of rules, or both – and, if by both, what matters are regulated in each.

The only relevant legal requirement is that, if the regulation of those election processes is to be effected by rules, there must be a Statute ‘empowering the Council’ to make those rules (as set out in section 34(3)(a) of the Curtin Act). Consistently with section 34(3)(a), Statute 5 empowers the Council to make rules to regulate, and provide for the regulation of, the election of Council members who are elected. 43

2.13 Minister Letter 1, containing the Minister’s and the Vice-Chancellor’s full reasoning, is attached as Appendix 4.

Committee conclusion—Statute No. 5 – Election of Council Members

2.14 Statute 5 fails to prescribe the manner in which elected Council members are to be elected.

2.15 Sections 9(c)–(f) of the Act expressly require Statutes to prescribe the manner of electing members of Council. However, Statute 5 fails to prescribe any such detail, and instead provides that all matters will be set out in the rules.

2.16 This approach is adopted by Curtin in spite of amendments to the Act in 2016, which inserted the express requirements that Statutes must set out the manner in which Council members are elected. 44

2.17 The Committee does not accept the Vice-Chancellor’s assertion that it is the Council which decides whether the manner of election of Council members will be prescribed in Statutes or rules. The requirement for the matters set out in sections 9(c)–(f) of the Act to be prescribed in Statute, approved by the Governor and published, coupled with the provisions making the Statutes disallowable, 45 clearly signify Parliament’s intention that the manner in which the members of the Council are elected is to be subject to Parliamentary scrutiny.

2.18 By prescribing the subject matter of sections 9(c)–(f) in rules rather than Statute, Curtin is in effect avoiding the scrutiny of the Parliament.

2.19 The purpose of disallowance was considered by the High Court in Dignan v Australian Steamships Pty Ltd (1931) 45 CLR 188:

> [the object is] to preserve the legislative power of Houses of Parliament over regulations made by the Executive or other statutory authorities: not to give a new legislative power, but to maintain the Houses of Parliament as the dominant authority in legislative matters. 46

2.20 The Committee recommends that Statute 5 be disallowed.

**FINDING 1**

The making of a Statute which provides for the subject matter in sections 9(1)(c)–(f) of the Curtin University Act 1966 to be set out in rules is not authorised by that Act.

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43 ibid., enclosure, p 2 (See Appendix 4).
44 Universities Legislation Amendment Act 2016 s 12, amending s 9(1) of the Curtin University Act 1966.
45 Curtin University Act 1966, s 35(2).
46 Dignan v Australian Steamships Pty Ltd (1931) 45 CLR 188, per Starke J, pp 201–2.
RECOMMENDATION 1

Curtin University Statute No. 5 – Election of Council Members be disallowed.

Inability to delay question of disallowance

2.21 The Committee appreciates the Minister’s position, requesting the Committee to delay further consideration of the University Statutes until the New Year. However, the Committee is unable to delay the question of disallowance being put to the Legislative Council. If it were to do so, the Committee would lose the ability to recommend disallowance of Statute 5.

2.22 A notice of motion to disallow the University Statutes was placed on 24 November 2020 in the Legislative Council.

2.23 The prorogation of the 40th Parliament due to the general election necessitates that the matter be dealt with prior to, or on, the proposed last Legislative Council sitting day of this Parliament, being 26 November 2020. Legislative Council Standing Order 67(5)(b) requires:

where, on the proposed last sitting day prior to a general election, a motion to disallow a regulation remains unresolved, then the question shall be put before the Council rises on that day.

2.24 The Committee notes the University does not concede the Statute is invalid in its current form.

2.25 On the basis of the information in this report, the Committee resolved to recommend disallowance of the University Statutes at its meeting on 4 November 2020.
CHAPTER 3
Curtin University, Statute No. 12 – Admission and Enrolment

Effect of Statute No. 12 – Admission and Enrolment

3.1 Statute 12 is attached as Appendix 2 to this report.

3.2 The Explanatory Memorandum of Statute 12 provided by the Minister to the Committee on 11 August 2020 advises:

The replacement Statute states the purpose of the Statute - to establish the framework for regulating the admission and enrolment of students, and the progression and assessment of enrolled students.

However, the replacement Statute is simplified in that, rather than specifying the matters to be included in the rules, it provides for the Council to make rules with respect to the purposes of the Statute and rules to carry out or give effect to the Statute.

3.3 Clause 5 of Statute 12 states:

The purpose of this Statute is to establish the framework for regulating –

(a) the admission and enrolment of students; and

(b) the progression and assessment of enrolled students.

3.4 Although Statute 12 purports to establish a framework for regulating the admission and enrolment of students, and progression and assessment of enrolled students, it fails to do so. Instead, Statute 12 contains a statement that the rules will contain such details. In particular, clause 5 of Statute 12 states:

The Council may make rules, not inconsistent with the Act or any Statute–

(a) to regulate, or provide for the regulation of:

i. the admission and enrolment of students; and

ii. the progression and assessment of enrolled students

3.5 Clause 5 is the only ‘substantive’ clause of the Statute.

3.6 Section 34(1) of the Act empowers the Council to make Statutes with respect to the following relevant matters:

- the entrance standards for students

- the granting of appropriate degrees, diplomas and certificates of honorary awards

- the admission of graduates and students of other educational institutions to any corresponding status in the University without examination

47 Curtin University Act 1966 s 34(1)(f).
48 ibid., s 34(1)(g).
49 ibid., s 34(1)(j).
• the recognition, instead of or for the purposes of any examination or course of study, of any course of study completed or examination passed in any educational institution.\textsuperscript{50}

3.7 Curtin is not required to regulate the above matters, but if it chooses to do so, section 34(1) requires it to do so via Statute.

3.8 Statute 12 repeals the previous Statute No. 12 – Enrolment, published in the Government Gazette on 30 April 1982 (Previous Statute 12).\textsuperscript{51}

3.9 Previous Statute 12 contained the following details, which have been deleted from the current Statute 12:

• who the Council may enrol as a student of Curtin
• that the Council may from time-to-time limit the enrolment of persons as students of Curtin for any course of study or programme
• when enrolment is completed
• when enrolment ceases
• subjecting enrolled students to Curtin’s by-laws, Statutes, rules and lawful instructions of authorised persons
• authorisation for the Council to make rules about fees to be charged for enrolment
• delegation of the Council’s powers under specified sections of the Statute.

Response from Minister—Statute No. 12 – Admission and Enrolment

3.10 The Minister’s position in relation to Statute 12 differed from that of Statute 5.

3.11 Minister Letter 2, dated 23 October 2020 in relation to Statute 12 noted:

The concern that rules are not subject to disallowance must be considered in that context. Parliament has specifically authorised the making of Statutes under section 34(3)(a), which empower the Council to regulate certain matters by rules. Parliament has also entrusted the governance of Curtin to the Council. The Council’s decision to make Statute No 12 in the course of its governance of Curtin is consistent with the Act and the Council’s role. In those circumstances, the fact that the Council has chosen to regulate the admission and enrolment of students by way of rules rather than by setting out the substance of that regulation in a Statute does not, in my respectful view, appear to provide a basis for disallowing Statute No 12.\textsuperscript{52}

3.12 Minister Letter 2 containing the Minister’s and the Vice-Chancellor’s full reasoning, is attached as Appendix 5.

Committee conclusion—Statute No. 12 – Admission and Enrolment

3.13 In the Committee’s view, the admission and enrolment of students is of central importance to the exercise of a university’s functions and is a matter which has the potential to affect individual rights.

\textsuperscript{50} ibid., ss 34(1)(k).

\textsuperscript{51} Curtin University, Statute No. 12 – Admission and Enrolment, cl 6.

\textsuperscript{52} Hon Sue Ellery MLC, Minister for Education and Training, Letter, 23 October 2020, p 2 (See Appendix 5).
3.14 Section 34(1)(f) of the Act authorises entrance standards for students to be set out in Statute, and section 34(1)(j) authorises Statutes to regulate the admission of graduates and students of other educational institutions to any corresponding status in the University.

3.15 The Committee’s view is that Curtin is not obliged to regulate the matters listed in section 34(1), however, if it does decide to do so, it must regulate those matters via Statute. It follows that matters in sections 34(1)(f) and (j) should be prescribed in Statute, rather than rules.

3.16 Neither the entrance standards for students, nor matters regulating the admission of graduates and students of other educational institutes are set out in Statute 12.

3.17 Statute 12 fails to set out any matters pertaining to the regulation of admission and enrolment of students whatsoever, and instead states that these matters will be set out in rules made for that purpose.

3.18 Curtin argues that the Act authorises admission and enrolment of students to be regulated via rules, without the requirement for any substantial accompanying Statute.

Curtin University’s literal interpretation of the Act

3.19 A literal reading of section 34(3)(a) of the Act is that rules and Statutes are of equal footing and where a Statute is to be made, rules can also be made, and that there is no requirement for a Statute to provide anything further than the power to make rules.

15 Curtin’s position is that a literal reading of section 34(3)(a) should be adopted and that upon such a reading:

- there is no requirement for the matters in section 34(1) to be set out in any substantial way in Statute
- Statutes can be made solely for the purpose of authorising rules
- it is for Curtin to decide which matters will be set out in rules, and which matters will be set out in Statute (even where the Act contemplates that certain matters will be set out in Statute).

3.20 A literal interpretation of section 34(3)(a), as applied by Curtin, makes Curtin the decider of which matters set out in section 34(1) will be scrutinised by the Parliament.

Committee’s purposive interpretation of the Act

3.21 The Committee considers that section 34(3)(a), which empowers the Council to make rules, must be read in the context of the whole Act.53

3.22 The Committee considers that a literal reading of section 34(3) cannot be sustained when the regulatory framework created by the Act is considered as a whole. The Act creates a hierarchy of regulation, as follows:

- Firstly, the Council may make Statutes about the matters set out in section 34 and in other sections of the Act.54 Statutes must be approved by the Governor, published in the Government Gazette and laid before the Parliament. Statutes are subject to disallowance: demonstrating Parliament’s intention to subject the contents of Statutes to Parliamentary scrutiny.

53 K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd (1985) 157 CLR 309, 315 (Mason J).

54 See for example, the establishment of the Academic Board of the University, the establishment of the Student Guild and the setting of Amenities and Service Fees: Curtin University Act 1966 ss 50(3)(b), 44(1) and 45(1) respectively.
• Secondly, rules may be made under a Statute. Rules do not require approval from the Governor and are not subject to disallowance and, in the Committee’s view, are subsidiary to Statutes.

• Finally, By-laws may be made in relation to limited subject matter, being matters relating to the management of University land. By-laws are required to be approved by the Governor, but are not subject to disallowance.

3.23 Section 18 of the Interpretation Act 1984 states:

In the interpretation of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose of object.

3.24 On the Committee’s purposive reading of the Act as a whole, matters which the Act specifies may be set out in Statute are matters intended to be subject to Parliamentary scrutiny. Therefore, these matters should be substantially set out in Statute, with rules providing administrative or ancillary detail only. Any other interpretation would result in an outcome where Curtin decides which matters are disallowable by the Parliament, and therefore, which subject matter the Parliament has the opportunity to scrutinise.

Distinction between rules and Statutes

3.25 A distinction must be drawn between the power of Curtin under section 34(1) of the Act to make Statutes and its power to make rules under section 34(3)(a) of the Act.

3.26 Although the power to make rules has been exercised by the person upon whom it has been conferred (in this case, the Council), the power has not been exercised in the manner and within the limits laid down by the Act conferring the power.55

3.27 Statutes have procedural safeguards which require their approval by the Governor, and publication in the Government Gazette and that they be placed before Parliament and subject to disallowance. The absence of such procedural requirements for rules made under section 34(3)(a) indicates that they were intended to be ancillary, procedural and facilitative.56

3.28 This is also consistent with the representation made to the Legislative Council during the Second Reading Speech of the Western Australia Institute of Technology Bill 1966, being that rules would be made by the Council to ‘give effect to’ the Statutes. Section 19 of the Interpretation Act 1984 provides that any Parliamentary material may be used to assist in the interpretation of a written law. In the Second Reading Speech, it was stated that:

The [University] Council is empowered by the Bill to make Statutes with respect to all matters pertaining to the institute and to proclaim by-laws and make rules for giving effect to the Statutes.57

3.29 It is apparent from the language in section 34(3) that rules are a lesser form of delegated legislation than Statutes.58

55 Dainford Ltd v Smith (1985) 155 CLR 342 at 349 per Gibbs CJ.
56 University of Western Australia v Gray (No 20) [2008] FCA 498, pp 27–8.
57 Hon GC MacKinnon MLC (Lower West), Minister for Health, Western Australia, Legislative Council, Second Reading Speech, Parliamentary Debates (Hansard), 25 November 1966, p 2868.
58 University of Western Australia v Gray (No 20) [2008] FCA 498.
3.30 In the case of *University of Western Australia v Gray (No 20)*, the Federal Court considered the relationship between University of Western Australia (UWA) Statutes, and UWA regulations, both made under the *University of Western Australia Act 1911*. UWA regulations are comparable to Curtin’s rules.

3.31 The Court noted that the first stated requirement of UWA regulations was ‘carrying out the Act ... or any Statute made by the governing body of the University.’ The Court found that these words indicated that UWA regulations are ancillary to Statutes. This is comparable to section 34(3)(a) of the Act which states that rules must not be ‘inconsistent with the Act or with any Statute’ and that rules may be made ‘carrying out or giving effect to the Statutes’. The Court concluded that regulations are:

>a lesser species of instrument than the Statutes. They do not attract the procedural protections attending the making of [Statutes].

The Committee agrees with this interpretation.

3.32 In its letter to the Minister, Curtin advised that it has created *Statute No. 3 – Rules and By-Laws* using section 34(3) as a head of power, and that this Statute (which repeats the content of the Act at section 34(3)), is authorisation to make rules about any subject area found in section 34(1). The Committee does not accept that section 34(3) can be utilised for that purpose.

3.33 The Committee disputes that section 34(3) can be used to authorise rules in general. In its view, rules must be made under Statute the subject matter of which is set out in section 34(1).

3.34 The Committee notes that in its letter to the Minister, Curtin argues this has never been challenged before. However, Report 25 by the Committee of the 37th Parliament raised similar concerns about rules and the lack of Parliamentary scrutiny they attract.

3.35 Curtin argues that they have applied the same interpretation of the Act over a significant period of time. The Committee notes however, that previous Statute 5 did set out the manner of election of Council members. Notwithstanding this, the Committee acknowledges that Curtin has built its corporate governance around its interpretation of the Act.

3.36 Nevertheless, the Committee remains very concerned about what it sees as an interpretation which results in Curtin, rather than the Parliament, deciding which material will be scrutinised by the Parliament. The practice of creating ‘skeletal’ Statutes has surpassed reasonable limits.

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59 ibid., para 85.

60 Section 16E(1) of the *University of Western Australia Act 1911* provides regulations may be made by that University’s governing body (the Senate) for carrying out the Act or any Statute made by the Senate, for the purpose of securing and enforcing management, good government and discipline. Section 16E(2) states that section 42 of the *Interpretation Act* does not apply to a regulation.

61 *University of Western Australia v Gray (No 20)* [2008] FCA 498, para 85.


63 *University of Western Australia v Gray (No 20)* [2008] FCA 498, para 85.

64 Hon Sue Ellery MLC, Minister for Education and Training, Letter, 23 October 2020 (See Appendix 5).

65 Hon Sue Ellery MLC, Minister for Education and Training, Letter, 23 October 2020 (See Appendix 4).


67 Hon Sue Ellery MLC, Minister for Education and Training, Letter, 23 October 2020, enclosure, p 2 (See Appendix 4).
and as noted by the Vice-Chancellor of Curtin in his letter, in recent years, the University’s Statutes and rules have been re-made and:

although some Statutes, for various reasons, have been more comprehensive, many have included few provisions beyond those empowering the making of rules to regulate the particular subject matter.68

3.37 On this occasion, the Committee will not be recommending disallowance of Statute 12. However, the Committee considers it necessary for the Act to be amended to clarify the Parliament’s intention in relation to the scrutiny and disallowance of Statutes and rules.

3.38 As noted by Professor Dennis Pearce and Stephen Argument in the text Delegated Legislation in Australia:

[A problem that arises from] ... the use of quasi-legislation is that it tends to detract from the law-making power of the parliament. If the parliament continues to delegate legislative powers to non-parliamentary bodies, without retaining at least some degree of control and scrutiny over what those bodies then do with the powers, then it can only detract from the power of the parliament.69

**FINDING 2**

Section 34(3) of the Curtin University Act 1966 should be amended to clarify the Parliament’s intention in relation to the scrutiny and disallowance of Statutes and rules.

**RECOMMENDATION 2**

The Parliament provide clarity as to whether the Curtin University Act 1966 was intended to operate to provide Curtin University with a discretion to determine whether subject matters set out in section 34 of the Curtin University Act 1966 should be subject to disallowance.

Ms Emily Hamilton MLA  
Chair

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68 ibid.  
CURTIN UNIVERSITY, STATUTE NO. 5 – ELECTION OF COUNCIL MEMBERS

CURTIN UNIVERSITY ACT 1966

Statute No. 5—Election of Council Members

It is hereby notified that the Governor in Executive Council, acting under the provisions of section 35 of the Curtin University Act 1966, has approved Statute No. 5—Election of Council Members—as set out in the attached schedule.

SUE ELLERY, MLC, Minister for Education and Training.

R. NEILSON, Clerk of the Executive Council.

CURTIN UNIVERSITY ACT 1966

Statute No. 5—Election of Council Members

This Statute is made by the Council of the University under the powers conferred on it by section 34 of the Curtin University Act 1966.

1. Short title

This Statute is Statute No. 5—Election of Council Members.

2. Commencement

This Statute takes effect on the day after publication in the Government Gazette.

3. Purpose

The purpose of this Statute is to establish a framework for the election of those Council members who are elected members.

4. Terms used

(1) In this Statute—

Act means the Curtin University Act 1966;

Council member has the meaning given to it in the Act;

Note: section 3(1) of the Act defines ‘member’ to mean—

‘a member of the Council’;

elected member means a Council member whose eligibility for membership is based on their election under section 9(1) of the Act;

Note: section 9(1) of the Act relevantly states—

‘1. The Council consists of the following members—

(c) one person who is a member of the academic staff of the University and who is elected by the academic staff of the University in the manner prescribed by Statute;

(d) 2 persons who are enrolled students—

(i) one of whom is an undergraduate student and who is elected by the undergraduate students in the manner prescribed by Statute; and

(ii) one of whom is a postgraduate student and who is elected by the postgraduate students in the manner prescribed by Statute;

(e) one person who is a member of the non-academic salaried staff of the University, and who is elected by the non-academic salaried staff of the University in the manner prescribed by Statute;

(f) 2 persons who are graduates of the University and who are elected by the graduates of the University in the manner prescribed by Statute.’

previous Statute No. 4 means Statute No. 5—Election of Staff Members to the Council, which came into force on 23 September 2005; and

previous Statute No. 9 means—

(a) Statute No. 9—Election of Student Members on the Council, which came into force on 16 September 2005; and

(b) Rule No. 1 Made Pursuant to Statute 9—Election of Student Members on the Council, which came into force on 16 September 2005.

2. Unless otherwise defined in subsection (1), a term used in this Statute has the meaning given in the Act or in Statute No. 3—Interpretation.

5. Rules

The Council may make rules, not inconsistent with the Act or any Statute—

(a) to regulate, or provide for the regulation of, the election of those Council members who are elected members; and
(b) to carry out or give effect to this Statute.

6. Revocation
Previous Statute No. 5 and previous Statute No. 9 are revoked.

The Common Seal of Curtin University was affixed on the 4th day of May by the authority of the Vice-Chancellor—

Professor DEBORAH TERRY, Vice-Chancellor.
ALISTAIR DONALD, Administrative Secretary.

Revision History

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APPENDIX 2

CURTIN UNIVERSITY STATUTE NO. 12 – ADMISSION AND ENROLMENT

CURTIN UNIVERSITY ACT 1966
Statute No. 12—Admission and Enrolment

This Statute is made by the Council of the University under the powers conferred on it by section 34 of the Curtin University Act 1966.

1. Short title
This Statute is Statute No. 12—Admission and Enrolment.

2. Commencement
This Statute takes effect on the day after publication in the Government Gazette.

3. Purpose
The purpose of this Statute is to establish the framework for regulating—
(a) the admission and enrolment of students; and
(b) the progression and assessment of enrolled students.

4. Terms used
(1) In this Statute, unless the contrary intention appears—
Act means the Curtin University Act 1966; and
enrolled student has the meaning given in the Act;
Note: section 4(1) of the Act defines enrolled student to mean—
'A student enrolled in the University'.
(2) Unless otherwise defined in subsection (1), a term used in this Statute has the meaning given in the Act or in Statute No. 2—Interpretation.

5. Rules
The Council may make rules, not inconsistent with the Act or any Statute—
(a) to regulate, or provide for the regulation of—
(i) the admission and enrolment of students; and
(ii) the progression and assessment of enrolled students; and
(b) to carry out or give effect to this Statute.

6. Revocation
Statute No. 12—Enrolment which was published in the Government Gazette on 30 April 1982 is revoked.

The Common Seal of Curtin University was affixed on the 4th day of May by the authority of the Vice-Chancellor—

Professor DEBORAH TERRY, Vice-Chancellor.
ALISTAIR DONALD, Administrative Secretary.

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APPENDIX 3

CURTIN UNIVERSITY ACT 1966, SECTION 34

Division 5 — Statutes

34. **Power to make Statutes**

(1) The Council may make Statutes, not inconsistent with this Act, with respect to all matters pertaining to the University and in particular may make Statutes with respect to —

(a) the management, good government and discipline of the University; and

(b) the use and custody of the common seal of the University, and the functions of the Council that may be exercised without the use of the common seal for that purpose; and

(c) the organization and supervision of the teaching of enrolled students; and

(d) the staff of the University; and

(e) the manner and time of convening, holding and adjourning the meetings of the Council, the manner of voting at those meetings, the powers and duties of the Chancellor, the conduct and record of the business, the appointment of committees of the Council and the quorum, powers and duties of those committees; and

[(ea) *deleted*]

(eb) the manner and time of convening, holding and adjourning the meetings of the Kalgoorlie Campus Council; the manner of voting at those meetings; the powers and duties of the chairperson of the Kalgoorlie Campus Council; the conduct and record of the business of the Kalgoorlie Campus Council; the appointment of committees of the Kalgoorlie Campus Council and the quorum, powers and duties of those committees; and

(f) the entrance standards for students; and

(g) the granting of appropriate degrees, diplomas and certificates or honorary awards by the University; and
(h) the granting of scholarships, exhibitions, bursaries and prizes; and
(i) the fees to be charged for courses of study or instruction, examinations, degrees, diplomas and certificates of the University and for such other facilities or privileges of the University as are prescribed; and
(ja) an annual amenities and services fee in accordance with section 45; and
(jb) the matters required by section 46 to be defined or prescribed by Statute; and
(j) the admission of graduates and students of other educational institutions to any corresponding status in the University without examination; and
(k) the recognition, instead of or for the purpose of any examination or course of study, of any course of study completed or examination passed in any educational institution; and
(la) the establishment by the Council of residential accommodation for staff of the University, or enrolled students, or both, and the management, control and closing of any residential accommodation; and
(l) the affiliation of residential accommodation for staff of the University, or enrolled students, or both, where the residential accommodation is not under the control of the Council; and
(m) the licensing and supervision of residential accommodation for staff of the University, or enrolled students, or both, and for the revocation of the licensing of that accommodation; and
(ma) the affiliation to or in connection with the University of any educational establishment, with the consent of the governing body of the educational establishment; and
(mb) the establishment and conduct of external teaching and educational facilities within or outside the State; and
(n) the control and investment of the property of the University; and

(o) any matter authorised or directed by this Act to be prescribed by Statute.

(1a) All fees imposed by or paid to the Council or the University before the commencement of this subsection, shall be deemed to be lawfully imposed or collected under this Act.

(1b) Without limiting any of the powers conferred by subsection (1), the Council may make a Statute furthering or facilitating the objects or operation of this Act with respect to long service leave entitlements of members of the staff of the University and in particular —

(a) providing for lump sum payments instead of long service leave entitlements;

(b) providing for lump sum payments for pro rata long service leave entitlements —

(i) to members of the staff who retire after attaining the age of 60 years or through ill-health; and

[[iii] deleted]

(iii) to other members of the staff; and

(iv) in the case of death of a member of the staff, to that person's estate; and

(v) in relation to each class of members of the staff to prescribe the minimum qualifying continuous service,

but so that the calculation of the amounts of leave or money to any member of the staff shall be based upon the rate of salary of the member at the date of his retirement, resignation or death, as the case may be; and so that no payment that exceeds the equivalent of 12 months' salary shall be paid under the Statute.
(1c) Without limiting any of the powers conferred by subsection (1), a Statute with respect to the discipline of the University may —

(a) prescribe disciplinary offences and disciplinary powers in relation thereto including penalties that may be imposed for the respective offences; and

(b) provide that penalties may be partly of one kind and partly of another but so that no monetary penalty for any one disciplinary offence exceeds $1,000; and

(c) prescribe circumstances under which a penalty may be modified or suspended; and

(d) provide, in addition to penalties, for restitution to the University not exceeding $1,000 for loss, damage, or destruction of University property arising out of the commission of a disciplinary offence; and

(e) prescribe rights of appeal against decisions made in the exercise or purported exercise of disciplinary powers; and

(f) prescribe the persons, classes of persons, and bodies of persons who may —

(i) make a complaint of a disciplinary offence; or

(ii) exercise all or any of the prescribed disciplinary powers; or

(iii) determine all or any appeals against decisions made in the exercise or purported exercise of disciplinary powers;

and

(g) prescribe the practice and procedure in relation to —

(i) making a complaint of a disciplinary offence; and

(ii) exercising disciplinary powers; and

(iii) determining appeals against decisions made in the exercise or purported exercise of disciplinary powers;

and
(h) prescribe the circumstances under which costs may be awarded to a person the subject of a complaint of a disciplinary offence, prescribing the persons, classes of persons, or bodies of persons who may award and fix those costs, and providing for payment thereof out of University funds; and

(i) prescribe the manner in which penalties may be enforced and, in the case of monetary penalties or amounts for restitution, recovered; and

(j) prescribe all such other matters as are necessary or expedient to be prescribed for the maintenance of the good order and discipline of the University.

(1d) Without limiting the power of delegation conferred on the Vice-Chancellor by section 14, where a Statute, or a rule made under a Statute, with respect to the discipline of the University confers on the Vice-Chancellor any disciplinary power or any power to hear and determine appeals from decisions made in the exercise or purported exercise of disciplinary powers or any power to award or fix costs, the Vice-Chancellor may delegate the power to any person, class of persons, or body of persons.

(1e) A Statute or a rule made under a Statute —

(a) may be limited in its application to time, place, or circumstance; and

(b) may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.

(2) A Statute made under this section may be revoked or amended by a subsequent Statute so made.

(3) The Statutes may provide for —

(a) empowering the Council of the University to make rules, not inconsistent with this Act or with any Statute for regulating or providing for the regulation of, any
specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes, and any of those rules shall have the same force and effect as a Statute; and

(b) the manner of promulgation of those rules; and

(c) the revocation or amendment of any of those rules.

(4) The production of a verified copy of any rule made under subsection (3) under the common seal of the University is evidence of the making and authenticity of the rule in all courts and before all persons acting judicially.

(5) It is deemed —

(a) that the Council has always had all the powers conferred on it by this section as amended by the Western Australian Institute of Technology Act Amendment Act 1974; and

(b) that paragraph (a) of Statute 3, published in the Government Gazette on 14 January 1969 includes and has always included all the matters referred to in subsection (1c).

[Section 34 amended: No. 37 of 1968 s. 5; No. 57 of 1970 s. 6; No. 49 of 1971 s. 7; No. 31 of 1974 s. 9; No. 59 of 1982 s. 11; No. 51 of 1983 s. 15 (as amended: No. 96 of 1986 s. 13); No. 96 of 1986 s. 11; No. 35 of 1996 s. 11 and 39; No. 43 of 1998 s. 6; No. 28 of 2003 s. 44; No. 32 of 2016 s. 39.]
APPENDIX 4

LETTER FROM MINISTER FOR EDUCATION AND TRAINING–STATUTE NO. 5

Hon Sue Ellery MLC
Minister for Education and Training
Leader of the Legislative Council

Your Ref: 4070.13/A845563
Our Ref: 61-25405

Ms Emily Hamilton MLA
Chair
Joint Standing Committee on Delegated Legislation
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Ms Hamilton

CURTIN UNIVERSITY STATUTE NO 5 – ELECTION OF COUNCIL MEMBERS
Thank you for your letter dated 24 September 2020 in which, on behalf of the Joint Standing Committee on Delegated Legislation, you have sought my response to two questions the Committee has about Statute No 5.

Before responding to those questions, I enclose a copy of a response to the questions from Curtin University (Curtin).

You will see from the response that in its view, section 34(1) and (3)(a) of the Curtin University Act 1966 (Act) confers power on its Council to make Statute No 5 because “rules may be made, if provided for by an empowering Statute, regulating ‘any specified matter with respect to which Statutes may be made’”. You will also see from Curtin’s response that its reliance on section 34(3)(a) in relation to Statute No 5 is consistent with its approach to various other Statutes its Council has made, as well as Curtin’s Corporate Governance Statement.

Why have the substantial matters been set out in rules, rather than Statutes?
The reasons for setting out the substantial matters in rules rather than the Statute have been provided by Curtin. This is primarily a governance matter for Curtin University and I make no comment on those reasons, given what I say below about the legal basis for the Statute.

What legal basis has Curtin used for setting out matters specified in sections 9(1) and 34(1) of the Act in rules, rather than Statutes?
As Curtin has noted, section 34(1) and (3)(a) authorises Council to make a Statute, which empowers the Council “to make rules, not inconsistent with this Act or with any Statute for regulating or providing for the regulation of, any specified matter with respect to which Statutes may be made”. Under section 34(1)(o), the Council can make a Statute with respect to “any matter authorised or directed by this Act to be prescribed by Statute.” It follows, in Curtin’s view, that the matters specified in sections 9(1) and 34(1) can be dealt with by rules rather than by Statute.

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This view is, with respect, plainly open. However, there are a number of features of the Act that create doubt about whether Curtin's Council can substantively deal with the matters specified in section 9(1) by rules rather than by Statute.

First, the power to make Statutes, including Statutes empowering the Council to make rules, cannot be exercised inconsistently with the Act (see section 34(1) and 34(3)(a)).

Second, the Act specifically provides in section 9(1)(c) to (f) for the manner of electing the elected members of Curtin's Council to be prescribed by Statute. This excludes the broader meaning of "prescribed" provided for by the definition of that term in section 4(1).

Third, the Act only specifically provides for matters to be prescribed by Statute that involve important matters of governance: the integrity of Curtin's academic awards (section 4(1) (definition of "examination"); the constitution of its governing authority, the Council (sections 8 and 9); the powers and duties of its chief executive officer, the Vice Chancellor (section 14(2) and (4)); and the management of a compulsory fee where at least some of the proceeds of the fee are not to be received or spent by Curtin, but rather by its Student Guild (sections 34(1)(jb) and 46).

Fourth, unlike rules, Statutes cannot be made without the Governor's approval and are subject to disallowance. As such, they are subject to control and scrutiny by the Executive and the Legislature. Given that the Act specifically provides for certain important governance matters to be prescribed by Statute, it would be surprising if a Statute on such a matter could empower the Council to make rules substantively dealing with the matter, so that (assuming the Statute is approved by the Governor and not disallowed) from then on, the matter could be dealt with by rules without any further control or scrutiny by the Executive and the Legislature.

Finally, section 34(3)(a) authorises the Statutes to empower the Council to make rules in relation to matters with respect to which Statutes may be made. This could be a reference to all matters on which Statutes can be made, because of the opening words of section 34(1). However, section 34(1)(o) refers to Statutes made with respect to "any matter authorised or directed by this Act to be prescribed by Statute". The words "authorised or directed" recognise a distinction between matters on which Statutes are authorised to be made (or, put another way, may be made), and matters which are directed to be prescribed by Statute. This distinction, while far from conclusive, supports the view that there are some matters which the Act directs to be prescribed by Statute and not in some other way.

These matters raise significant doubts about whether the election of Council members is a matter which can be substantively prescribed by rules rather than by Statute. On balance, and while the matter is not beyond doubt, after considering the concerns raised by the Committee I consider that the manner of electing Council members should be substantively addressed in a Statute and not by rules.
Proposed course of action

Curtin does not concede that Statute No 5 is invalid in its current form. However, in light of the concerns raised by the Committee and the doubts expressed above, Curtin’s Council will be asked to revoke Statute No 5 and make a new Statute No 5, so that the matters currently dealt with by rules are incorporated in the Statute. Curtin expects that the matter will be considered by the Council at its December meeting, after which (if a new Statute is made) the Governor’s approval must be sought and the new Statute must be provided to the Committee for its scrutiny.

In light of that position, I respectfully request that the Committee postpone further consideration of Statute No 5 until a suitable date in the New Year, so that the Committee can be informed of the outcome of the Council’s December meeting before it deliberates further on Statute No 5.

Yours sincerely

SUE ELLERY MLC
MINISTER FOR EDUCATION AND TRAINING

23 OCT 2023

Enc.
1 October 2020

Hon S M Ellery, MLC
Minister for Education and Training
13th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Email: minister.ellery@dpc.wa.gov.au

Dear Minister

Curtin University Statute No. 5 – Election of Council Members

I am writing to you in response to the letter to you dated 24 September 2020 from the Chair of the Joint Standing Committee on Delegated Legislation (Committee).

1. Committee’s questions

In relation to Curtin University’s Statute No. 5 – Election of Council Members (Statute 5), the Committee has asked –

‘1. Why have the substantial matters been set out in the rules, rather than Statutes?

2. What legal basis has the University used for setting out matters specified in sections 9(1) and 34(1) in rules, rather than Statutes?’.

2. Summary of responses

It is convenient to deal first with the Committee’s second question relating to the legal basis for the University ‘setting out matters specified in sections 9(1) and 34(1) of the Curtin University Act 1966 (Curtin Act) in rules rather than Statutes’ (see parts 3-5 below).

In short, the University has been given, and has exercised, the powers vested in it under section 34(3)(a) of the Curtin Act to set out, in rules rather than a Statute, the matters specified in sections 9(1) and 34(1).

Those legislative powers are a major reason for the University ‘setting out matters specified in sections 9(1) and 34(1) in rules, rather than Statutes’.

Among other reasons are that the University’s exercise of those powers in this case is consistent with the Corporate Governance Statement of the University approved by the University Council and its exercise of the same powers, in other cases, over many decades – without any concerns having previously been raised by the Committee or any other person or body (see part 6 below).
3. Legislative power to regulate by rules

The Committee’s letter cites references in section 9(1)(c)-(f) of the Curtin Act, to various elections ‘in the manner prescribed by Statute’ and states –

‘The Committee considers that subsections 9(1)(c)-(f) of the Act require the process of elections for academic staff, enrolled students, non-academic staff and graduates, to be set out in Statute. However, Statute 5 sets out these processes in rules rather than the Statute’. Paragraphs (c)-(f) of section 9(1) of the Curtin Act provide for (rather than ‘require’) the process for each election to be ‘prescribed by Statute’. It does not follow that, under the Curtin Act, the relevant process for each election cannot be set out in rules, rather than Statute.

The University’s power to make rules is set out in section 34(3) of the Curtin Act which states –

‘The Statutes may provide for —

empowering the Council of the University to make rules, not inconsistent with this Act or with any Statute for regulating or providing for the regulation of, any specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes, and any of those rules shall have the same force and effect as a Statute;

(a) the manner of promulgation of those rules; and

(c) the revocation or amendment of any of those rules’.

Therefore, rules may be made, if provided for by an empowering Statute, regulating ‘any specified matter with respect to which Statutes may be made’.

One of those ‘specified matters for which Statutes may be made’ is set out in section 34(1)(o) of the Curtin Act which refers to –

‘any matter authorised or directed by this Act to be prescribed by Statute’.

Among the matters ‘authorised or directed by this Act to be prescribed by Statute’ are the matters set out in section 9(1)(c)-(f) of the Curtin Act relating to elections ‘in the manner prescribed by Statute’. It follows that (regardless of whether the provisions in section 9(1)(c)-(f) referring to ‘the manner prescribed by Statute’ are considered to be ‘authorised’ or ‘directed’ to be prescribed by Statute) –

(2) the Council may make a Statute prescribing the manner of those elections; and

(3) the Council may also make rules prescribing the manner of those elections.

The legal position is that, under the Curtin Act, it is for the University to determine whether the regulation of the election processes under section 9(1)(c)-(f) of the Curtin Act is to be effected by way of a Statute or by way of rules, or both – and, if by both, what matters are regulated in each.

The only relevant legal requirement is that, if the regulation of those election processes is to be effected by rules, there must be a Statute ‘empowering the Council’ to make those rules (as set out in section 34(3)(a) of the Curtin Act). Consistently with section 34(3)(a), Statute 5 empowers the Council to make rules to regulate, or provide for the regulation of, the election of Council members who are elected (and other matters). Section 5 of Statute 5 states –
‘5. Rules

The Council may make rules, not inconsistent with the Act or any Statute —

(a) to regulate, or provide for the regulation of, the election of those Council members who are elected members; and

(b) to carry out or give effect to this Statute’.

In accordance with section 5 of Statute 5, the Council has made the Election of Council Members Rules 2020. Copies of these rules, and Statute 5, are attached.

For these reasons, the University is satisfied that it unquestionably has the power, under section 34(3)(a) of the Curtin Act and section 5 of Statute 5, to make the Election of Council Members Rules 2020.

4. Alternative source of legal power

Even if Statute 5 were to be disallowed (or repealed), the Election of Council Members Rules 2020 would still be lawful and valid. This is because Statute No. 3 – Rules and By-laws (Statute 3) is also a Statute ‘empowering the Council’ (within the terms of section 34(3)(a) of the Curtin Act) to make those rules. Section 5 of Statute 3 states —

‘5. Power to make rules

(1) The Council may make rules, not inconsistent with the Act or any Statute —

(a) to regulate, or provide for the regulation of, any specified matter with respect to which a Statute may be made; or

(b) to carry out or give effect to a Statute.

Note: under section 34(3)(a) of the Act, a rule ‘shall have the same force and effect as a Statute’.

(2) The Council may revoke or amend a rule made under this section’.

The Committee has acknowledged that a Statute may be made regulating the election processes under section 9(1)(c)-(f). It follows from section 34(3)(a) of the Curtin Act and section 5(1)(a) of Statute 3 that — even in the absence of Statute 5 — the Council had the power to make the Election of Council Members Rules 2020 and, therefore, that those rules would continue to be valid and effective even if Statute 5 were to be disallowed.

5. Reference to explanatory memorandum

The Committee’s letter refers to the statement in “[t]he EM of Statute 5’ that —

‘The replacement Statute is simplified in that, rather than including details of eligibility and the election processes, it merely provides for the Council to make rules to regulate the election of elected members of the Council and rules to carry out or give effect to the Statute’.

In relation to this statement, the Committee’s letter comments that —
The significant distinction between Statutes and rules is that Statutes are subject to Parliamentary scrutiny, whereas rules are not.

The University appreciates that Parliament has determined that Statutes are subject to Parliamentary scrutiny and that rules are not. The 2016 amendments to the Curtin Act, including the insertions of sections 35 and 36A, confirm the position relating to Parliamentary scrutiny of Statutes, but not rules, and also introduced additional requirements relating to Statutes, but not rules.

These amendments do not affect the University’s rule making powers under section 34(3) of the Curtin Act, including the powers to determine whether, and if so to what extent, rules may be made ‘for regulating or providing for the regulation of ... any specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes’.

6. Other considerations

It is important to appreciate that the approach taken by the University in relation to Statute 5 and the Election of Council Members Rules 2020 is consistent with the approach that it has taken for many years – without any concerns having previously been raised by the Committee or any other person or body.

In recent years, the University has spent considerable time and resources undertaking a comprehensive legislative review program, resulting in the remaking of most of its Statutes and rules. Although some Statutes, for various reasons, have been more comprehensive, many have included few provisions beyond those empowering the making of rules to regulate the particular subject matter. Among the examples of these are –

(1) Statute No. 26 - Fees and Charges, gazetted on 22 May 2012;
(2) Statute No. 10 – Student Discipline, gazetted on 16 February 2018;
(3) Statute No. 21 – Academic Board, gazetted on 24 January 2020; and
(4) Statute No.11 – Library, gazetted on 11 February 2020.

The University’s approach, over many decades, has been based on the rule making powers that it has been given under section 34(3)(a) of the Curtin Act. Those powers have not materially changed since the enactment of the Western Australian Institute of Technology Act 1966.

In addition, the Corporate Governance Statement of the University, approved by Council on 26 September 2012, is designed, among other things, to inform the students and staff of the University, as well as external stakeholders, including the Australian Government, the Western Australian State Government, industry and the general community, about key aspects of the University’s governance arrangements. A copy of the Statement is attached for information and is also available on the University’s website.

Under clauses 2.4 and 2.5 of the Statement, Statutes are made by Council with respect to any matters pertaining to the management and good governance of the University and rules are approved by Council for regulating any specified matter with respect to which a Statute may be made, noting that rules are enforceable by law and have the same force and effect as a Statute. Under the Statement, in general Statutes are not to contain administrative detail.
Accordingly, rules are to contain the administrative and procedural detail relevant to the prudent operation of the University. To ensure they are legally sound, rules and, given the frequently changing environment in which the University operates, any amendments made to rules are scrutinised by the Legislative Committee of Council before approval by Council. The Legislative Committee consists of an external member of Council with relevant expertise, who shall be Chair; the Vice-Chancellor; and up to three other members, with relevant expertise, appointed by Council.

Having regard to the Committee’s comments in relation to Parliamentary scrutiny of Statutes (but not rules), it is particularly significant that the legal position has not materially changed since the enactment of the Western Australian Institute of Technology Act 1966. In that period of over 50 years, University Statutes have been subject to Parliamentary scrutiny, whereas rules have not. Despite this, the University is not aware of any previous suggestion, from the Committee or otherwise, that the Parliamentary scrutiny of Statutes constitutes a limitation on the scope or exercise of the University’s rule making powers under section 34(3) of the Curtin Act.

Please let me know if you would like to discuss any of these matters or if you need any further information to respond to the Chair of the Committee.

Yours sincerely

[Signature]

Professor John Cordery

Vice-Chancellor
APPENDIX 5

LETTER FROM MINISTER FOR EDUCATION AND TRAINING–STATUTE NO. 12

Hon Sue Ellery MLC
Minister for Education and Training
Leader of the Legislative Council

Your Ref: 4070.13/A845563
Our Ref: 61-25404

Ms Emily Hamilton MLA
Chair
Joint Standing Committee on Delegated Legislation
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Ms Hamilton

CURTIN UNIVERSITY STATUTE NO 12 – ELECTION OF COUNCIL MEMBERS
Thank you for your letter dated 24 September 2020 in which, on behalf of the Joint Standing Committee on Delegated Legislation, you have sought my response to two questions the Committee has about Statute No 12.

Before responding to those questions, I enclose a copy of a response the questions from Curtin University (Curtin).

You will see from the response that in its view, section 34(1) and (3)(a) of the Curtin University Act 1966 (Act) confers power on its Council to make Statute No 12, because "rules may be made, if provided for by an empowering Statute, regulating "any specified matter with respect to which Statutes may be made". You will also see from Curtin's response that its reliance on section 34(3)(a) in relation to Statute No 12 is consistent with its approach to various other Statutes its Council has made, as well as Curtin's Corporate Governance Statement.

Why have the substantial matters been set out in rules, rather than Statutes?
The reasons for setting out the substantial matters in rules rather than the Statute have been provided by Curtin. This is primarily a governance matter for Curtin and I make no comment on those reasons.

However, I note that, unlike Statute No 5, Statute No 12 does not deal with a matter which the Act specifies as being one to be prescribed by Statute. For the reasons given by Curtin on the legal basis for Statute No 12 to which I refer below, Statute No 12 deals with a matter on which the Council can be empowered by Statute to make rules regulating the matter. That is an outcome that is specifically contemplated by the Act.

I also observe that the current Statute No 12 is similar to its immediate predecessor, in that they both leave much of the substance of how the enrolment of students is to be regulated to rules, rather than setting that substance out in the Statute. In this sense, the new Statute No 12 does not appear to represent a new approach to regulating this matter.

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What legal basis has Curtin used for setting out matters specified in section 34(1) of the Act in rules, rather than Statutes?

As Curtin has noted, section 34(1) and (3)(a) authorises Curtin's Council to make a Statute which empowers the Council "to make rules, not inconsistent with this Act or with any Statute for regulating or providing for the regulation of, any specified matter with respect to which Statutes may be made". The admission and enrolment of students is undoubtedly a matter with respect to which a Statute may be made. It follows, in Curtin's view, that the matters specified in section 34(1) can be dealt with by rules rather than by Statute.

Unlike the position in relation to Statute No 5, there is no reason to doubt that a Statute (such as Statute No 12) can be made empowering the Council to make rules regulating the admission and enrolment of students. The Act does not provide for the matters dealt with by Statute No 12 to be prescribed by Statute. Those are matters on which a Statute may be made under section 34(1) and, under section 34(3)(a), a Statute can be made which empowers the Council to make rules regulating those matters.

The concern that rules are not subject to disallowance must be considered in that context. Parliament has specifically authorised the making of Statutes under section 34(3)(a), which empower the Council to regulate certain matters by rules. Parliament has also entrusted the governance of Curtin to the Council. The Council's decision to make Statute No 12 in the course of its governance of Curtin is consistent with the Act and the Council's role. In those circumstances, the fact that the Council has chosen to regulate the admission and enrolment of students by way of rules rather than by setting out the substance of that regulation in a Statute does not, in my respectful view, appear to provide a basis for disallowing Statute No 12.

I trust that the above is of assistance to the Committee in its consideration of Statute No 12.

Yours sincerely

[Signature]

SUE ELLERY MLC
MINISTER FOR EDUCATION AND TRAINING

23 OCT 2023

Enc.
1 October 2020

Hon S M Ellery, MLC
Minister for Education and Training
13th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister

Curtin University Statute No. 12 – Admission and Enrolment

I am writing to you in response to the letter to you dated 24 September 2020 from the Chair of the Joint Standing Committee on Delegated Legislation (Committee).

1. Committee’s questions

In relation to Curtin University’s Statute No. 12 – Admission and Enrolment (Statute 12), the Committee has asked –

1. Why have the substantial matters been set out in the rules, rather than Statutes?

2. What legal basis has the University used for setting out matters specified in section 34(1) in rules rather than Statutes?.

2. Summary of responses

It is convenient to deal first with the Committee’s second question relating to the legal basis for the University ‘setting out matters specified in section 34(1) of the Curtin University Act 1966 (Curtin Act) in rules rather than Statutes’ (see parts 3-5 below).

In short, the University has been given, and has exercised, the powers vested in it under section 34(3)(a) of the Curtin Act to set out, in rules rather than a Statute, the matters specified in section 34(1).

Those legislative powers are a major reason for the University ‘setting out matters specified in section 34(1) in rules, rather than Statutes’.
Among other reasons are that the University’s exercise of those powers in this case is consistent with the Corporate Governance Statement of the University approved by the University Council and its exercise of the same powers, in other cases, over many decades – without any concerns having previously been raised by the Committee or any other person or body (see part 6 below).

3. Legislative power to regulate by rules

3.1 General power to make rules

Section 34(3) of the Curtin Act states –

‘The Statutes may provide for —

(a) empowering the Council of the University to make rules, not inconsistent with this Act or with any Statute for regulating or providing for the regulation of, any specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes, and any of those rules shall have the same force and effect as a Statute;

(b) the manner of promulagation of those rules; and

(c) the revocation or amendment of any of those rules’.

Applying these provisions, a Statute may be made empowering the Council to make rules for regulating any specified matter with respect to which Statutes may be made.

3.2 Power to make rules regulating admission and enrolment

It is clear, and the Committee has not questioned, that a University Statute may be made regulating the admission and enrolment of students. It follows, from section 34(3)(a) of the Curtin Act, that rules may also be made regulating the same subject matter – in this case, the admission and enrolment of students. The legal position is that, under the Curtin Act, it is for the University to determine whether the regulation of the admission and enrolment of students is to be effected by way of a Statute or by way of rules, or both – and, if by both, what matters are regulated in each.

The only relevant legal requirement is that, if the regulation of admission and enrolment is to be effected by rules, there must be a Statute ‘empowering the Council’ to make those rules (as set out in section 34(3)(a) of the Curtin Act). Consistently with section 34(3)(a), Statute 12 empowers the Council to make rules to regulate, or provide for the regulation of, the admission and enrolment of students (and other matters). Section 5 of Statute 12 states –

‘5. Rules

The Council may make rules, not inconsistent with the Act or any Statute –

(a) to regulate, or provide for the regulation of –

(i) the admission and enrolment of students; and
(ii) the progression and assessment of enrolled students; and

(b) to carry out or give effect to this Statute’.

In accordance with section 5 of Statute 12, the Council has made –

(1) the Admission and Enrolment (Higher Degree by Research) Rules; and
(2) the Enrolment Rules (General),

(together, the Admission and Enrolment Rules). Copies of these rules, and Statute 12, are attached.

For these reasons, the University is satisfied that it unquestionably has the power, under section 34(3)(a) of the Curtin Act and section 5 of Statute 12, to make the Admission and Enrolment Rules.

4. Alternative source of legal power

Even if Statute 12 were to be disallowed (or repealed), the Admission and Enrolment Rules would still be lawful and valid. This is because Statute No. 3 – Rules and By-laws (Statute 3) is also a Statute ‘empowering the Council’ (within the terms of section 34(3)(a) of the Curtin Act) to make those rules. Section 5 of Statute 3 states –

‘5. Power to make rules

(1) The Council may make rules, not inconsistent with the Act or any Statute –

(a) to regulate, or provide for the regulation of, any specified matter with respect to which a Statute may be made; or

(b) to carry out or give effect to a Statute.

Note: under section 34(3)(a) of the Act, a rule ‘shall have the same force and effect as a Statute’.

(2) The Council may revoke or amend a rule made under this section’.

Since it is clear, and the Committee has not questioned, that a Statute may be made regulating the admission and enrolment of students, it follows from section 34(3)(a) of the Curtin Act and section 5(1)(a) of Statute 3 that the Council – even in the absence of Statute 12 – had the power to make the Admission and Enrolment Rules and, therefore, that the Admission and Enrolment Rules would continue to be valid and effective even if Statute 12 were to be disallowed.

5. Reference to ‘establish the framework’

The Committee’s letter refers to the statement in the ‘EM for Statute 12’ that the purpose of section 12 is ‘to establish the framework for regulating the admission and enrolment of students,
and the progression and assessment of enrolled students’. This purpose is set out in section 3 of
Statute 12 which states that –

‘3. Purpose

The purpose of this Statute is to establish the framework for regulating –

(a) the admission and enrolment of students; and

(b) the progression and assessment of enrolled students’.

The Committee’s letter ‘notes that no such framework is established in the Statute’.

The reference in section 3 of Statute 12 to ‘this Statute’ was intended to mean ‘this Statute and the
rules made under section 5 of this Statute’. (A similar approach is taken to references to an Act as
including subsidiary legislation made under the Act.)

In any event, it is not apparent from the Committee’s letter that it is considering, or would
consider, recommending the disallowance of Statute 12 on this basis alone. If that were the case,
and if Statute 12 were to be disallowed, the University would then need to consider whether –

(1) Statute 12 should be replaced with an identically worded Statute 12 except that, in section
3 ‘Statute’ would be replaced with ‘Statute and the rules made under this Statute’; or

(2) Statute 12 should not be replaced at all, leaving Statute 3 as the relevant empowering
Statute for the Admission and Enrolment Rules.

Neither of these actions would affect the Admission and Enrolment Rules which are, and would
remain, lawful and valid.

6. Other considerations

It is important to appreciate that the approach taken by the University in relation to Statute 12 and
the Admission and Enrolment Rules is consistent with the approach that it has taken for many years
– without any concerns having previously been raised by the Committee or any other person or
body.

Almost 40 years ago, a predecessor to the current Statute 12 was published in the Gouvernment
Gazette. (A copy of Statute 12 – Enrolment, published in the Government Gazette on 13 April 1982,
is attached.) It adopted a similar approach to the current version, with the substantial regulation of
enrolment located in rules made under the Statute, rather than in the Statute itself.

In recent years, the University has spent considerable time and resources undertaking a
comprehensive legislative review program, resulting in the remaking of most of its Statutes and
rules. Although some Statutes, for various reasons, have been more comprehensive, many have
included few provisions beyond those empowering the making of rules to regulate the particular
subject matter. Among the examples of these are –
(1) Statute No. 26 - Fees and Charges, gazetted on 22 May 2012;
(2) Statute No. 10 – Student Discipline, gazetted on 16 February 2018;
(3) Statute No. 21 – Academic Board, gazetted on 24 January 2020; and
(4) Statute No.11 – Library, gazetted on 11 February 2020.

The University’s approach, over many decades, has been based on the rule making powers that it has been given under section 34(3)(a) of the Curtin Act. Those powers have not materially changed since the enactment of the Western Australian Institute of Technology Act 1966.

In addition, the Corporate Governance Statement of the University, approved by Council on 26 September 2012, is designed, among other things, to inform the students and staff of the University, as well as external stakeholders, including the Australian Government, the Western Australian State Government, industry and the general community, about key aspects of the University’s governance arrangements. A copy of the Statement is attached for information and is also available on the University’s website.

Under clauses 2.4 and 2.5 of the Statement, Statutes are made by Council with respect to any matters pertaining to the management and good governance of the University and rules are approved by Council for regulating any specified matter with respect to which a Statute may be made, noting that rules are enforceable by law and have the same force and effect as a Statute. Under the Statement, in general Statutes are not to contain administrative detail.

Accordingly, rules are to contain the administrative and procedural detail relevant to the prudent operation of the University. To ensure they are legally sound, rules and, given the frequently changing environment in which the University operates, any amendments made to rules are scrutinised by the Legislative Committee of Council before approval by Council. The Legislative Committee consists of an external member of Council with relevant expertise, who shall be Chair; the Vice-Chancellor; and up to three other members, with relevant expertise, appointed by Council.

Please let me know if you would like to discuss any of these matters or if you need any further information to respond to the Chair of the Committee.

Yours sincerely

[Signature]

Professor John Cordeny
Vice-Chancellor
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<td>Committee</td>
<td>Joint Standing Committee on Delegated Legislation</td>
</tr>
<tr>
<td>Council</td>
<td>Council of Curtin University; Governing authority of Curtin University</td>
</tr>
<tr>
<td>Curtin</td>
<td>Curtin University</td>
</tr>
<tr>
<td>Minister</td>
<td>Minister for Education and Training</td>
</tr>
<tr>
<td>Minister Letter 1</td>
<td>Letter from Minister for Education and Training dated 23 October 2020 in relation to <em>Curtin University Statute No. 5 – Election of Council Members</em> (see Appendix 4).</td>
</tr>
<tr>
<td>Minister Letter 2</td>
<td>Letter from Minister for Education and Training dated 23 October 2020 in relation to <em>Curtin University Statute No. 12 – Admission and Enrolment</em> (see Appendix 5).</td>
</tr>
<tr>
<td>Statute 5</td>
<td>Curtin University, <em>Statute No. 5 – Election of Council Members</em> as published in the Government <em>Gazette</em> on 24 July 2020</td>
</tr>
<tr>
<td>Statute 12</td>
<td>Curtin University, <em>Statute No. 12 – Admission and Enrolment</em> as published in the Government <em>Gazette</em> on 24 July 2020</td>
</tr>
<tr>
<td>University Statutes</td>
<td>Curtin University, <em>Statute No. 5 – Election of Council Members</em> and Curtin University, <em>Statute No. 12 – Admission and Enrolment</em>.</td>
</tr>
<tr>
<td>Previous Statute 5</td>
<td>Curtin University, <em>Statute No. 5 – Election of Staff Members to the Council</em>, which came into force on 23 September 2005 and was repealed by clause 6 of Statute 5.</td>
</tr>
<tr>
<td>Previous Statute 12</td>
<td>Curtin University, <em>Statute No. 12 – Enrolment</em> which was published in the Government <em>Gazette</em> on 30 April 1982 and repealed by clause 6 of Statute 12.</td>
</tr>
<tr>
<td>TOR</td>
<td>Term of Reference (see <em>Legislative Council Standing Orders</em>, schedule 1, item 10.6).</td>
</tr>
<tr>
<td>UWA</td>
<td>University of Western Australia</td>
</tr>
</tbody>
</table>
Joint Standing Committee on Delegated Legislation

Date first appointed:
15 June 2017

Terms of Reference:
The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

10. Joint Standing Committee on Delegated Legislation

10.1 A Joint Standing Committee on Delegated Legislation is established.

10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.

10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.

10.4 (a) A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.

(b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.

10.5 Upon its publication, whether under section 41(1)(a) of the Interpretation Act 1984 or another written law, an instrument stands referred to the Committee for consideration.

10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -

(a) is within power;

(b) has no unintended effect on any person's existing rights or interests;

(c) provides an effective mechanism for the review of administrative decisions; and

(d) contains only matter that is appropriate for subsidiary legislation.

10.7 It is also a function of the Committee to inquire into and report on -

(a) any proposed or existing template, pro forma or model local law;

(b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and

(c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.

10.8 In this order-

"instrument" means -

(a) subsidiary legislation in the form in which, and with the content it has, when it is published;

(b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;

"subsidiary legislation" has the meaning given to it by section 5 of the Interpretation Act 1984."