

JAMES COOK UNIVERSITY OF NORTH QUEENSLAND BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to improve the administration and management of James Cook University of North Queensland by repealing and rewriting the *James Cook University of North Queensland Act 1970*, in accordance with the *Legislative Standards Act 1992*. In contrast to the existing Act, the Bill will substantially reduce the number of statutes (subordinate legislation) which may be made by the University, and streamline the process for the approval of such statutes, while extending the capacity of the University to make policy on matters necessary to its good governance, but not of a legislative character.

Reasons for the Bill

Following the passage of the *Legislative Standards Act 1992*, and the *Statutory Instruments Act 1992*, the provisions of the *James Cook University of North Queensland Act 1970* were, in common with legislation creating other public Universities in Queensland, found to be inconsistent with current drafting standards, and to place an excessive burden on both the University and the Government by allowing the institution to make a large number of statutes (subordinate legislation) for the governance of the University and its affairs. Because of the extensive nature of the required amendments to almost every section of the Act to bring it into line with current legislative standards, it was found to be more efficient to repeal the existing Act and to replace it with a new piece of legislation.

Ways in which the objectives are to be achieved

The objectives of the Bill will be achieved by:

- no longer providing for the Council to make University statutes (subordinate legislation) about matters of an administrative nature or in relation to policy, but restricting the statutes that the Council may make, to matters of a legislative nature only;
- no longer requiring the University's statutes to be drafted by the Office of the Parliamentary Counsel or approved by the Governor in Council;
- no longer providing for the University's powers of investment to be in the University's Act but declaring the University to be a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* which provides for the investment and borrowing powers of statutory bodies, including public Universities;
- no longer providing for financial operating and reporting requirements of the University to be in the University's Act but declaring the University to be a statutory body for the purposes of the *Financial Administration and Audit Act 1977* which provides for the financial operating and reporting requirements of statutory bodies, including public Universities;
- no longer providing for the Council to make statutes in relation to conduct of persons and control of traffic on University land but providing for these matters to be contained in a Schedule to the University's Act;
- no longer providing for the Academic Board of the University to be constituted under a University statute, but providing for the Academic Board's establishment and functions to be in the University's Act;
- no longer providing for the Governor in Council, by order in council, to establish colleges of the University (including provisions relating to the constitution and membership of advisory councils for such colleges), but providing that the University's Council may establish colleges by University statute with the prior approval of the Governor in Council and that the University's Council may establish an advisory council for each college;

- no longer providing for the Governor in Council to approve a scheme determined by the Council, concerning the use of donated property and no longer requiring the scheme to be published in the Government Gazette;
- revising the membership structure of the Council, including reducing the maximum number of members from 35 to 27 and no longer including outdated provisions put in place in 1981 in relation to the “advanced education sector” which no longer exists;
- providing that the Council is properly constituted when it has 15 or more members and that a quorum exists at a meeting of the council if at least half its members are present;
- providing the Minister for Education with discretionary powers in relation to a person convicted of an indictable offence, becoming or being reappointed an “appointed member” of the Council;
- providing the Council with discretionary powers in relation to a person convicted of an indictable offence, becoming or being reappointed or re-elected an “additional member” or “elected member” of the Council;
- providing for the Deputy Chancellor to hold office for up to 3 years instead of for 1 year only; and
- providing for the University to hold and dispose of State land under the *Land Act 1994*, specifying that the University may only grant an interest in such land by way of lease and restricting the period of the lease to not more than 25 years.

Alternatives to the Bill

The two alternatives to the Bill are to make the necessary legislative changes by way of amendments to the existing *James Cook University of North Queensland Act 1970*; or to make no changes to the legislation, leaving the University to operate under the existing outdated Act and outdated statutes.

Because the existing University Act is written in outdated drafting style, the option of making the necessary changes by way of amending virtually every section of the Act is not acceptable, as it produces a piece of

legislation which is incomprehensible. Without the changes contemplated in the new Bill, the University's existing legislation would be inconsistent with legislative standards adopted by the Parliament in 1992, and with the *Statutory Bodies Financial Arrangements Act 1982*, and the requirements of the membership composition of the University's governing body for the appointment of persons in certain categories would be increasingly out of date, and become impossible to comply with.

Administrative Cost to Government

There are no administrative costs to the Government to implement the legislation. There will be significant savings to Government by virtue of the reduction in the number of pieces of subordinate legislation which may be made by the University, and the fact that such statutes will no longer be drafted by the Office of the Parliamentary Counsel, or subject to approval by the Governor in Council and the cost of their publication in the Government Gazette will be met by the University.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation

There has been extensive consultation with the University over the last four years. Those provisions relating to the structure of the University's governing body have been the subject of consultations with the Cairns and Townsville communities, with staff and student bodies and both campuses of the University, and with the governing body itself. The Departments of the Treasury, Natural Resources, and Local Government and Planning have also been consulted concerning any provisions in the Bill intersecting with their responsibilities.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 provides for the short title of the Act.

Clause 2 provides for the Act to commence on a date to be fixed by proclamation.

Clause 3 provides for the meanings of the various terms used in the Act to be laid out in Schedule 2 to the Act.

PART 2—THE UNIVERSITY AND ITS COUNCIL

Clause 4 provides for the establishment of the University, and gives it the legal status of a corporation.

Clause 5 specifies the functions of the University.

Clause 6 specifies the general powers of the University.

Clause 7 provides for the establishment of the University's governing body, the Council.

Clause 8 specifies the functions of the Council.

Clause 9 specifies the powers of the Council.

Clause 10 specifies the way the Council must act.

Clause 11 provides for the Council to delegate its powers under the Act to certain persons, and specifies the matters in relation to which the Council may not delegate its powers.

Clause 12 provides for the Council membership to consist of official members, appointed members, elected members and additional members.

Clause 13 specifies that persons in certain designated positions are the official members of the Council.

Clause 14 provides that there are 9 appointed members on the Council, and that these members must be appointed by the Governor in Council.

Clause 15 provides that there are 10 elected members on the Council, specifies the composition of this category of membership and specifies how the members are to be elected. Despite these provisions, the clause also provides the Council with discretion to allow the Convocation to appoint the required number of members of Convocation as elected members and to allow the Council of the Union to appoint the required number of students as elected members.

Clause 16 provides for the Council to appoint 2 additional members, but that an additional member must not be a member of the University's academic or full-time general staff, or an enrolled student of the University.

Clause 17 provides that the Council is taken to be properly constituted when it has 15 or more members from any category of membership.

Clause 18 provides that an appointed member's term of office is not more than 3 years.

Clause 19 provides that an elected member's term of office is 3 years and specifies when an elected member's term of office starts.

Clause 20 provides that an additional member's term of office is not more than 3 years.

Clause 21 provides that if any group charged with electing or appointing an "elected" member or members to the Council fails to do so by a day fixed by the Council, then the Minister may appoint to the Council as many members of that category as are necessary to satisfy the provisions of clause 15 in relation to the composition of the elected members.

Clause 22 provides for the term of office for members of the Council appointed or elected to fill a casual vacancy.

Clause 23 specifies the circumstances which make a person ineligible for membership on the Council as an elected, appointed or additional member.

Clause 24 specifies the circumstances under which the office of an appointed, elected or additional member becomes vacant.

Clause 25 provides that, in the case of a person who is an appointed member, or is being considered for appointment as an appointed member, if that person has been convicted of an indictable offence, the Minister may, at the Minister's discretion, and having regard to the nature of the offence, determine that the person may be appointed, or reappointed to the Council, and if re-appointed, the consequences for the member's term of office.

Clause 26 provides that, in the case of a person who is an elected or additional member, or who or is being considered for election or appointment as an elected member or for appointment as an additional member, if that person has been convicted of an indictable offence, the Council may, at its discretion, and having regard to the nature of the offence, determine that the person may be restored as an elected or appointed member, or may become an elected or appointed member.

Clause 27 provides that the Chancellor is to preside at meetings of the Council, and that if the Chancellor and Deputy Chancellor are both absent from a meeting of the Council, that the members present may elect a member to preside at the meeting.

Clause 28 specifies that a quorum for a meeting of the Council exists if half the members are present.

Clause 29 provides that, subject to the requirements laid down in the legislation, the Council may regulate the conduct of its meetings as it considers appropriate.

PART 3—CERTAIN OFFICERS OF THE UNIVERSITY

Clause 30 provides for the position of Chancellor of the University; for the Chancellor to be elected by the Council; that the Council may elect a person who is not already a member of the Council to the office of Chancellor, and for the Chancellor to hold office for a term of up to 5 years, to be determined by the Council.

Clause 31 provides for the position of Deputy Chancellor of the University; for the Council to elect one of its members to the office of Deputy Chancellor; for the Deputy Chancellor to hold office for up to three years, and for the Deputy Chancellor to act as Chancellor in certain circumstances.

Clause 32 provides for the office of Vice-Chancellor of the University; for the Council to appoint the Vice-Chancellor and determine the terms and conditions of the appointment; for the Vice-Chancellor to be the Chief Executive Officer of the University; and for the Vice-Chancellor to delegate the powers of the office of Vice-Chancellor to an appropriately qualified member of the University's staff.

PART 4—BODIES CONNECTED WITH THE UNIVERSITY

Clause 33 provides that a Convocation of the University is established; that the Council is to decide the membership of Convocation by making a University statute; and that the Council is to determine matters relating to the conduct of meetings of the Convocation, including how the Convocation will appoint members to the Council.

Clause 34 provides that the James Cook University of North Queensland Union is established, and gives the Union the legal status of a corporation.

Clause 35 provides for the composition of the Union.

Clause 36 provides that, although the role and powers of the Union are decided by the Council, the Union is not the employee or agent of the Council.

Clause 37 specifies the general powers of the Union.

Clause 38 provides that the Union must have a written constitution; that the constitution and each proposed amendment to the constitution must be submitted to the Council for approval; and that the constitution or amendment has no legality until approved by the Council.

Clause 39 provides that the University may establish colleges of the University by making a University statute; that the establishment of a college must first be approved by the Governor in Council; that the Council may establish an advisory council for each college, and determine its membership and functions; and the terms and conditions applying to any property held on trust for the college.

Clause 40 provides for the establishment and functions of the Academic Board of the University.

PART 5—PROPERTY AND FINANCE

Clause 41 provides a definition of “property” for the purposes of this division of the Act.

Clause 42 provides that, under certain circumstances, the Council may devise a scheme to use property held by the University on terms which require the property to be used for a particular purpose (“the donor’s purpose”), for another purpose (“the designated purpose”), and for such a scheme to be in writing, and available free of charge to anyone who requests it.

Clause 43 specifies the type of purpose the Council must prefer in selecting a designated purpose.

Clause 44 specifies that property to which a scheme applies is to be held by the University for the designated purpose.

Clause 45 provides that if the scheme applies to land, the University is required to give a copy of the scheme to the person responsible for keeping a register of interests in the land.

Clause 46 provides for the amendment of an approved scheme.

Clause 47 clarifies that the Act does not limit the University’s powers and rights under any other law about property held in trust by the University.

Clause 48 provides that the University may agree to and carry out any conditions of a gift, grant or a bequest to the University (including property).

Clause 49 provides that any State land held by the University is held and may be disposed of under the *Land Act 1994*; but that the University itself may grant a lease of not more than 25 years duration over State land which it holds.

Clause 50 declares the University to be a statutory body under the *Financial Administration and Audit Act 1977*, under which the financial operations, and reporting requirements of the University are regulated.

Clause 51 declares the University to be a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*, under which the investment and borrowing powers of Universities are to be regulated.

Clause 52 specifies that the University may establish or administer trust funds.

Clause 53 provides that the University may establish an investment common fund, and the way the University is to operate such a fund.

Clause 54 specifies that, subject to the terms of a relevant trust, all funds received by the University from any source are to be applied solely to University purposes and specifies such purposes.

Clause 55 provides that the Council must adopt a budget each calendar year for the following year and must review annually the funds received by bequest, donation or special grant, and the application of such funds.

Clause 56 specifies that the University's financial year is a calendar year.

PART 6—UNIVERSITY STATUTES

Clause 57 provides for the University to make statutes, and provides that statutes may only be made about specified matters.

Clause 58 specifies that a University statute is subordinate legislation, which must be tabled in the Legislative Assembly, is subject to disallowance by the Parliament, and must be published in full in the Government Gazette. The clause also declares that a University statute is an exempt instrument under the *Legislative Standards Act 1992*, which means that it does not have to be drafted by the Office of the Parliamentary Counsel, and does not have to be approved by the Governor in Council.

Clause 59 provides that the University must not make a statute affecting the Union's role or powers unless the Council gives the Union a copy of the proposed statute, and considers any comments made by the Union on the statute.

Clause 60 provides for the Council to make University rules under a University statute, and the requirements for notification of such rules.

PART 7—MISCELLANEOUS

Clause 61 authorises the University to be a member of, form, take part in forming, or manage a corporation with objectives which are consistent with those of the University, and specifies what those objects are.

Clause 62 provides for the University to enter into a contract or other arrangement with an entity for the use of the University's facilities, and the provision of services by staff.

Clause 63 specifies that Schedule 1 of the Act, which provides for the control of traffic and conduct of persons on University land, has legal effect.

Clause 64 authorises the Governor in Council to make regulations under the Act.

Clause 65 provides that references in an Act or document to the repealed Act may, if the context permits, be taken to be a reference to the new Act.

PART 8—REPEAL AND TRANSITIONAL

Clause 66 specifies the meaning of terms used in Part 8 of the new Act, which contains provisions pertaining to the repeal of the *James Cook University of North Queensland Act 1970*, and necessary transitional arrangements.

Clause 67 repeals the *James Cook University of North Queensland Act 1970*.

Clause 68 provides for the James Cook University of North Queensland and the James Cook University of North Queensland Union, established under the repealed Act, to continue under the new Act.

Clause 69 declares that the assets and liabilities of the former University or former Union vest in the University or the Union, and any property held in trust under the former University or the former Union is held on the same trusts by the University or the Union. The clause also declares that any contracts entered into by or on behalf of the former University or former Union and all guarantees, undertakings and securities entered into by or on behalf of the former University or former Union, continue and may be enforced against or by the University or the Union.

Clause 70 provides for the continuity of any legal proceedings which may have started by or against the former University or former Union to be continued by or against the University or Union.

Clause 71 provides for persons holding office under the repealed Act to continue to do so for the balance of the term of office established under that Act.

Clause 72 provides for those persons holding office on the Council of the University under the repealed Act to continue in office until the expiry of their terms of office under the repealed Act.

Clause 73 provides for the continuity of rights and entitlements for staff members of the former University or the former Union.

Clause 74 provides for existing statutes and rules that are consistent with the new Act to remain in force for one year after the day on which Part 8 of the new Act commences, unless sooner repealed.

Clause 75 provides for the existing Convocation to continue as the Convocation under the new Act.

Clause 76 provides for the existing constitution of the former Union in place before the commencement of Part 8, to continue as the Union's constitution under the new Act.

Clause 77 provides for references in an Act or document, in existence immediately before the commencement of Part 8, to the former University or former Union to be a reference to the University or Union.

Clause 78 provides for this part of the new Act, (Part 8) except for sections 67 and 72, to expire 1 year after it commences.

Schedule 1

CONTROL OF TRAFFIC AND CONDUCT ON UNIVERSITY LAND

PART 1—AUTHORISED PERSONS AND SECURITY OFFICERS

Clause 1 provides for the Vice-Chancellor to appoint authorised persons and security officers for the purpose of controlling the driving, parking and standing of vehicles on University land, and for the purpose of controlling the conduct of persons who are drunk, disorderly or creating a disturbance on University land.

Clause 2 provides for the conditions of appointment of the authorised persons and the security officers.

Clause 3 provides that the Vice-Chancellor must issue an identity card to each authorised person and security officer.

Clause 4 provides that an authorised person or security officer may exercise their powers under the legislation only if the person or officer produces or has displayed his or her identity card.

PART 2—TRAFFIC CONTROL

Clause 5 provides that an authorised person may control traffic on University land and give directions to persons on the land in order to control such traffic.

Clause 6 provides for the University to erect or display a “regulatory notice” controlling the driving, parking or standing of vehicles on the land, and specifies examples of the matters which may be included on the notice. The clause also allows the University to erect and display “regulatory notices” in the form of official traffic signs.

Clause 7 provides that, if a “regulatory notice” does not state that a breach of a requirement of the notice is an offence under the legislation, and specify the penalty for the offence, the University must erect or display “information notices” stating that a breach of a requirement of a “regulatory notice” is an offence and stating the penalty for such an offence.

Clause 8 provides that an authorised person may seize, remove and hold a vehicle at a safe place that the authorised person believes on reasonable grounds is parked in breach of a ‘regulatory notice’ or is abandoned. The clause provides that the authorised officer may exercise such powers only under specified circumstances and that if the vehicle is seized the University must inform the owner in writing of where the vehicle is held and how the owner may recover it. The clause also provides that if the vehicle was parked in breach of a “regulatory notice”, the owner must pay to the University the cost of seizing, removing, holding and returning the vehicle.

Clause 9 provides that if the owner of a vehicle that is being held does not recover the vehicle within 2 months after being given written notice, the University may, after publishing a notice in a newspaper, sell the vehicle by public auction.

Clause 10 specifies how and in what order the proceeds of the sale of the vehicle must be applied.

PART 3—CONDUCT ON UNIVERSITY LAND

Clause 11 provides that a person must not be disorderly or create a disturbance on University land.

Clause 12 provides that a security officer may direct a person to leave the University's land or part of the University's land if the security officer finds the person breaching section 11 of this part of the Act, or for other specified reasons.