

# **Australian Catholic University (Queensland) Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the Australian Catholic University (Queensland) Bill 2006.

#### **Policy Objectives of the Legislation**

The primary objectives of the Bill are to recognise the Australian Catholic University (ACU) as a university, and facilitate its operation in Queensland.

#### **Reasons for the Bill**

The provisions of Queensland's *Higher Education (General Provisions) Act 2003* currently enable ACU to operate as a university in Queensland, by virtue of its status as an interstate university under that Act. However, for some time, ACU has sought its own Queensland stand-alone legislation to give it separate and specific recognition as a university in Queensland. This will bring it into line with all other major Queensland-based universities, for which there are separate Queensland Acts.

#### **Achieving the Objectives**

The Bill achieves the objectives by specifying that ACU is recognised as a university in Queensland; and by including explicit provisions to facilitate its operation in Queensland. This includes provisions to:

- confirm that ACU's governing body (its senate) is solely responsible for, and has authority over, the provision of education by ACU;
- specify that it is a function of ACU to confer higher education awards;
- provide that ACU may establish investment common funds to enable the pooling of trust and other funds for investment purposes;

- prohibit ACU from using an exemption under the *Anti-Discrimination Act 1991* in relation to discrimination on religious grounds; and
- clarify that the State is not liable for ACU or its operations.

### **Administrative costs**

There are no administrative costs associated with this legislation.

### **Fundamental Legislative Principles**

The Bill does not infringe fundamental legislative principles.

### **Consultation**

ACU was consulted during the development of the Bill and was provided with a consultation draft of the Bill.

The following Government agencies were also consulted about the Bill: the Department of the Premier and Cabinet, Queensland Treasury, and the Department of Justice and the Attorney-General.

## **Notes on Provisions**

### **Part 1                      Preliminary**

#### **Short title**

Clause 1 establishes the short title of the Act as the *Australian Catholic University (Queensland) Act 2006*.

#### **Definitions**

Clause 2 provides that the dictionary in the schedule defines particular words used in the Act.

#### **Main purposes**

Clause 3 states that the main purposes of the Act are to—

- (a) recognise the Australian Catholic University as a university; and
- (b) facilitate its operation in Queensland.

## **Part 2                    The university**

### **Recognition as a university**

Clause 4 provides that the Australian Catholic University is recognised as a university in Queensland.

### **Independence of the university**

Clause 5 provides that the university senate (i.e. its governing body) is solely responsible for, and has authority over, the provision of education by the university; and that the senate is not subject to the direction of any person in relation to the provision of education by the university. This confirms that the university is independent of other bodies (such as the State) with respect to its provision of education.

### **Use of name ‘Australian Catholic University’**

Clause 6 authorises the university and its senate to use the name ‘Australian Catholic University’ in relation to the conduct of the university.

As an Australian public company limited by guarantee, the university is subject to the provisions of the *Corporations Act 2001* (Cwlth), which requires it to have the word ‘Limited’ at the end of its name. However, section 5G(6)(a) of the *Corporations Act 2001* (Cwlth) does not prohibit the use of another name if the use of that name is expressly provided for, or authorised by, a provision of a law of a State or Territory. Therefore, the clause permits the company to use the name ‘Australian Catholic University’.

### **Function of conferring awards**

Clause 7 provides that the university has a function to confer higher education awards. Stating this function in the Act is consistent with the National Protocols for Higher Education Approval Processes (the ‘National Protocols’), which were approved by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) on 31 March 2000. Item 1.14 of Protocol 1 of the National Protocols specifies that one of the

features to be demonstrated by an Australian university is that it should be authorised by law “*to award higher education qualifications across a range of fields and to set standards for those qualifications which are equivalent to Australian and international standards*”.

The Dictionary in the schedule to the Act defines the term **higher education award** by reference to that term in the *Higher Education (General Provisions) Act 2003*, schedule 2, which in turn states that a higher education award means—

- (a) a degree, status, title or description of associate, bachelor, master or doctor; or
- (b) any other award, if the course of study relating to it is classified as higher education in the course descriptions stated in the Australian Qualifications Framework.

## **Part 3                      Investment common funds**

### **Establishment of investment common funds**

Clause 8 provides that the university may establish 1 or more investment common funds for the collective investment of funds belonging to or vested in the university. This includes trust funds that the university must apply for the purpose for which they were given. Therefore, clause 8 allows the university to invest such funds without incurring any liability for breach of trust.

### **Income of investment common funds**

Clause 9 specifies how the university must periodically distribute the income generated by an investment common fund that it has established. The income must be distributed among each fund forming part of the investment common fund, having regard to the share each component fund has in the investment common fund during the period in which the income is derived.

However, despite this requirement, the university may also—

- (a) add a part of the income to the investment common fund’s capital; or

- (b) use a part of the income to establish or augment another fund to make provision against capital depreciation or reduction of income.

### **Funds added to investment common fund**

Clause 10 clarifies that if funds are added to an investment common fund by a component fund, then the university is taken to hold those funds for the benefit of the investment common fund. Also, the component fund is taken to have added to the investment common fund an amount equivalent to the value attributed by the university to the added funds at the time the funds were added to the investment common fund. This clause also provides that if a component fund stops forming part of the investment common fund, then the amount to be withdrawn is to be equivalent to the value attributed by the university to the component fund's equity in the investment common fund at the time of the withdrawal.

### **Trust funds**

Clause 11 states that the inclusion of trust funds in an investment common fund does not affect the trust to which those trust funds, or amounts attributed to those trust funds, are subject. Also, the power of the university to include trust funds in an investment common fund is subject to any express direction in, or express condition of, the trust.

## **Part 4                      Miscellaneous**

### **No religious discrimination**

The *Anti-Discrimination Act 1991* prohibits discrimination by educational authorities against students or prospective students. However, it is not unlawful for them to discriminate if a specific exemption applies. In particular, section 41 of the *Anti-Discrimination Act 1991* provides that an educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may exclude applicants who are not of the particular sex or religion, or who do not have a general, or the specific, impairment.

Given that the university is open to all students and staff, regardless of their beliefs and backgrounds, it is appropriate that the university should not be

able to use the exemption in section 41 of the *Anti-Discrimination Act 1991*. Therefore, clause 12 supports this position by stating that section 41 of the *Anti-Discrimination Act 1991* does not apply to allow the university to discriminate in the area of education by excluding an applicant for admission as a student who is not of a particular religion.

### **Liability of the State**

Unlike the majority of other Queensland universities, the university is not a statutory body. Consequently, the university is not required to comply with the requirements of the *Statutory Bodies Financial Arrangements Act 1982* or the *Financial Administration and Audit Act 1977*. Clause 13 clarifies that the State is not liable for any action, claim, demand or liability arising from the enactment or operation of the Act or from anything done by the university under the Act.

### **Application of Higher Education (General Provisions) Act 2003**

Clause 14 states that part 2 of the *Higher Education (General Provisions) Act 2003* does not apply to the university.

## **Schedule Dictionary**

The schedule defines particular words used in the Act, as follows:

***Australian Catholic University*** or ***the university*** means the Australian Catholic University Limited ACN 050 192 660.

***component fund*** see section 9(1).

***funds*** include trust funds, real property, securities and other property, belonging to or vested in the university.

***higher education award*** see the *Higher Education (General Provisions) Act 2003*, schedule 2.

***senate*** means the Senate of the university as constituted under the university's constitution.