

University Legislation Amendment Bill 2005

Explanatory Notes for Amendments to be moved during Consideration in detail by The Honourable Anna Bligh MP

Title of the Bill

University Legislation Amendment Bill 2005

Objectives of the Amendments

The objective of the amendments is to amend the *Central Queensland University Act 1998*, *James Cook University Act 1997*, *Queensland University of Technology Act 1998*, *University of Queensland Act 1998*, *University of Southern Queensland Act 1998* and the *University of the Sunshine Coast Act 1998* to address the concerns raised by the Commonwealth Department of Education, Science and Training and to make the necessary consequential and technical amendments necessary to provide consistency across the Acts.

Reasons for the Amendments

Previously, two consultation drafts of the University Legislation Amendment Bill 2005 ('the Bill') were provided to the Commonwealth Minister for Education, Science and Training and the Commonwealth Department of Education, Science and Training.

Despite addressing the issues raised by the Commonwealth Minister during consultation, new issues have now been raised regarding discretionary provisions in particular University Acts which enable the university governing body to authorise the relevant student association, convocation or alumni association to appoint an eligible person to be the elected student, convocation or alumni member, without conducting a ballot or to fill a casual vacancy in the office of the relevant elected member.

To assist Queensland universities to demonstrate compliance with the requirements of the National Governance Protocols and therefore be

eligible for the additional funding increment, it has been decided to make the necessary amendments to the *Central Queensland University Act 1998*, *James Cook University Act 1997*, *Queensland University of Technology Act 1998*, *University of Queensland Act 1998*, *University of Southern Queensland Act 1998* and the *University of the Sunshine Coast Act 1998*.

Achieving the Objectives

The amendments amend where necessary, the *Central Queensland University Act 1998*, *James Cook University Act 1997*, *Queensland University of Technology Act 1998*, *University of Queensland Act 1998*, *University of Southern Queensland Act 1998* and the *University of the Sunshine Coast Act 1998* to provide:

- that the respective university governing bodies no longer have the ability to authorise the relevant student association to appoint the elected student member without a ballot being conducted;
- that the respective university governing bodies no longer have the ability to authorise the convocation or alumni to appoint the relevant elected members without a ballot being conducted;
- that in filling casual vacancies which arise in the office of certain elected members, the university governing body may appoint an eligible person to the office without conducting a fresh ballot; and
- for other minor consequential and technical amendments which are necessary to provide consistency across the Acts.

Consultation

All six affected universities have been consulted about the proposed amendments.

Notes on Provisions

Amendment 1 amends Clause 6 (Amendment of s 15 - Elected Members) of the Bill which amends section 15 of the *Central Queensland University Act 1998*. The amendment replaces the existing Clause 6(6) to insert a new Clause 6(6). The new Clause 6(6) removes section 15(4) of the *Central Queensland University Act 1998* so that the council may no longer

authorise the council of the student association to appoint the elected member mentioned in subsection 2(c) at a meeting of the council of the student association.

Amendment 2 amends Clause 10 (Amendment of s 19 - Elected member's term of office) of the Bill which amends section 19 of the *Central Queensland University Act 1998*. The amendment omits the existing Clause 10(2) and inserts new Clauses 10(2) and 10(3).

The new Clause 10(2) amends section 19(2)(a) to omit the reference to 'or reappointed'. This amendment is necessary because it will no longer be possible to appoint an elected member under section 15. The new Clause 10(3) renumbers sections 19(1A) and 19(2) to become sections 19(2) and 19(3).

Amendment 3 amends Clause 12 (Amendment of s 20A - Dealing with casual vacancy in office of an elected member) which amends section 20A of the *Central Queensland University Act 1998*. Amendment 3 replaces section 20A(5) of the *Central Queensland University Act 1998* with a new section 20A(5). The new section 20A(5) provides that despite subsection (4), if the elected member was a student, the council may appoint a student to the office. This amendment means that where a casual vacancy arises in the office of an elected member who is a student, the council may appoint a student without conducting a ballot.

Amendment 4 omits the existing Clause 13 (Amendment of s 21 - Failure to elect or appoint elected members) and inserts a new Clause 13 into the Bill. The new Clause 13 replaces section 21 of the *Central Queensland University Act 1998* with a new section 21 (Failure to elect elected member).

Section 21(1) provides that if an entity permitted to elect an elected member does not elect a person as the elected member by a day fixed by the council by notice given to the entity, the Minister may appoint a member of the entity as the elected member.

Section 21(2) provides that the council may, if asked by the Minister, nominate a person for appointment under subsection (1).

Section 21(3) provides that a person appointed under subsection (1) is taken to have been elected by the entity under section 15.

Section 21(4) provides that this section applies to the periodic election of members and an election required because of a casual vacancy.

The replacement of section 21 is necessary because an entity will no longer be able to appoint a person as an elected member under section 15.

Amendment 5 amends Clause 27 (Amendment of sch 2 – Dictionary) to insert a new Clause 27(3). The new Clause 27(3) amends the definition of the term ‘*elected member*’ in Schedule 2 of the *Central Queensland University Act 1998* to omit the reference to ‘or appointed’. This is necessary because it will no longer be possible for an elected member to be appointed under section 15.

Amendment 6 amends Clause 53 (Amendment of s 15 - Elected members) of the Bill which amends section 15 of the *James Cook University Act 1997*. The amendment omits existing Clauses 53(4) and 53(5) of the Bill and inserts a new Clause 53(4). The new Clause 53(4) omits section 15(4) entirely so that the council may no longer authorise the:

- council of the union to appoint the members mentioned in subsections (2)(c), (d) or (e) at a meeting of the council of the union;
- convocation to appoint the members mentioned in subsection (2)(f) at a meeting of the convocation at which a quorum is present.

Amendment 7 amends Clause 57 (Amendment of s 19 - Elected member’s term of office) which amends section 19 of the *James Cook University Act 1997*. The amendment omits the existing Clause 57(2) and inserts new Clauses 57(2) and 57(3) into the Bill.

The new Clause 57(2) amends section 19(2)(a) to omit the reference to ‘or reappointed’. This amendment is necessary because it will no longer be possible to appoint an elected member under section 15. The new Clause 57(3) renumbers sections 19(1A) and 19(2) to become sections 19(2) and 19(3).

Amendment 8 omits the existing Clause 59 and inserts a new Clause 59 into the Bill. The new Clause 59 (Amendment of s 20A - Dealing with casual vacancy in office of an elected member) amends section 20A in the *James Cook University Act 1997*.

The new Clause 59(1) omits the existing section 20A(5) of the *James Cook University Act 1997* and inserts a new section 20A(5). The new section 20A(5)(a) provides that despite subsection (4), if the elected member was a student – the council may appoint a student to the office. The new section 20A(5)(b) provides that despite subsection (4), if the elected member was a member of the convocation – the council may appoint a member of the convocation to the office.

The new section 20A(5) means that where a casual vacancy arises in the office of an elected member:

- if the elected member was a student – the council may appoint a student to the office, without conducting a ballot.
- if the elected member was a member of the convocation – the council may appoint a member of the convocation to the office, without conducting a ballot.

The new Clause 59(2) amends the definition of *‘member of the convocation’* in section 20A(7) to omit the reference to ‘(b) or (c)’ and insert the following reference ‘(b), (c), (d) or (e).’

Amendment 8 also inserts a new Clause 59A into the Bill. The new Clause 59A omits the existing section 21 of the *James Cook University Act 1997* and inserts a new section 21 (Failure to elect elected members).

Section 21(1) provides that if an entity permitted to elect an elected member does not elect any or enough persons as elected members by a day fixed by the council by notice given to the entity, the Minister may appoint to the council as many members of the entity as necessary to comply with section 15.

Section 21(2) provides that the council may, if asked by the Minister, nominate a person for appointment under subsection (1).

Section 21(3) provides that a person appointed under subsection (1) is taken to have been elected by the entity under section 15.

Section 21(4) provides that this section applies to the periodic election of members and an election required because of a casual vacancy.

The replacement of section 21 is necessary because an entity will no longer be able to appoint a person as an elected member under section 15.

Amendment 9 amends Clause 71 (Amendment of sch 2 – Dictionary) to insert a new Clause 71(3). The new Clause 71(3) amends the definition of the term *‘elected member’* in Schedule 2 of the *James Cook University Act 1997* to omit the reference to ‘or appointed’. This is necessary because it will no longer be possible to appoint an elected member under section 15.

Amendment 10 inserts an amendment into Clause 76 (Amendment of s 15 - Elected members) which amends section 15 of the *Queensland University of Technology Act 1998*.

The amendment inserts a new Clause 76(3) which omits section 15(4) entirely so that the council may no longer authorise the:

- council of the student guild to appoint the elected members mentioned in subsection (2)(c) at a meeting of the council of the student guild;
- QUT Alumni to appoint the elected members mentioned in subsection (2)(d) at a meeting of QUT Alumni at which a quorum is present.

Amendment 11 amends Clause 79 (Amendment of s 19 - Elected member's term of office) which amends section 19 of the *Queensland University of Technology Act 1998*. The amendment omits the existing Clause 79(2) and inserts new Clauses 79(2) and 79(3) into the Bill.

The new Clause 79(2) amends section 19(2)(a) to omit the reference to 'or reappointed'. This amendment is necessary because it will no longer be possible to appoint an elected member under section 15. The new Clause 79(3) renumbers sections 19(1A) and 19(2) to become sections 19(2) and 19(3).

Amendment 12 inserts new Clauses 80A and 80B after Clause 80 of the Bill.

The new Clause 80A (Amendment of s 20A - Dealing with casual vacancy in office of an elected member) omits the existing section 20A(5) of the *Queensland University of Technology Act 1998* and inserts a new section 20A(5). The new section 20A(5)(a) provides that despite subsection (4), if the elected member was a student – the council may appoint a student to the office. The new section 20A(5)(b) provides that despite subsection (4), if the elected member was a member of QUT Alumni (the *alumni*) – the council may appoint a member of the alumni to the office.

The new section 20A(5) means that where a casual vacancy arises in the office of an elected member:

- if the elected member was a student – the council may appoint a student to the office, without conducting a ballot.
- if the elected member was a member of the QUT Alumni – the council may appoint a member of the alumni to the office, without conducting a ballot.

The new Clause 80B (Replacement of s 21 - Failure to elect or appoint elected members) omits the existing section 21 of the *Queensland University of Technology Act 1998* and inserts a new section 21 (Failure to elect elected members).

Section 21(1) provides that if an entity permitted to elect elected members does not elect any or enough persons as elected members by a day fixed by the council by notice given to the entity, the Minister may appoint to the council as many members of the entity as necessary to comply with section 15.

Section 21(2) provides that the council may, if asked by the Minister, nominate a person for appointment under subsection (1).

Section 21(3) provides that a person appointed under subsection (1) is taken to have been elected by the entity under section 15.

Section 21(4) provides that this section applies to the periodic election of members and an election required because of a casual vacancy.

The replacement of section 21 is necessary because an entity will no longer be able to appoint an elected member under section 15.

Amendment 13 amends the new section 67 which is inserted by Clause 90 of the Bill. The amendment inserts a new section 67(2) to provide that a person who immediately before the commencement, was an elected member appointed under section 15 of the pre-amended Act is taken to have been elected under that section. This ensures that if an elected member was appointed under section 15 of the pre-amended Act, the person is taken to have been elected.

Amendment 14 amends Clause 91 (Amendment of sch 2 – Dictionary) to insert a new Clause 91(2A). The new Clause 91(2A) amends the definition of the term ***‘elected member’*** in Schedule 2 of the *Queensland University of Technology Act 1998* to omit the reference to ‘or appointed’. This amendment is necessary because it will no longer be possible to appoint an elected member under section 15.

Amendment 15 amends Clause 100 (Amendment of s 19 - Elected member’s term of office) which amends section 19 of the *University of Queensland Act 1998*. The amendment omits the existing Clause 100(2) and inserts new Clauses 100(2) and 100(3) into the Bill.

The new Clause 100(2) amends section 19(2)(a) to omit the reference to ‘or reappointed’. This amendment removes an unnecessary reference as an elected member cannot be appointed under section 15. The new Clause 100(3) renumbers sections 19(1A) and 19(2) to become sections 19(2) and 19(3).

Amendment 16 amends Clause 115 (Amendment of sch 2 – Dictionary) of the Bill to insert a new Clause 115(3). The new Clause 115(3) amends the

definition of the term '***elected member***' in Schedule 2 of the *University of Queensland Act 1998* to omit the reference to 'or appointed'. This amendment removes an unnecessary reference as elected members cannot be appointed under section 15.

Amendment 17 amends Clause 120 (Amendment of s 15 - Elected members) of the Bill which amends section 15 of the *University of Southern Queensland Act 1998*.

The amendment omits Clauses 120(5) to 120(7) and inserts a new Clause 120(5). The new Clause 120(5) omits sections 15(4) and 15(5) entirely. This means that the board of directors of the alumni association will no longer be able to appoint the elected members mentioned in subsection (2)(d). It also means that the council may no longer authorise the board of the student guild to appoint the elected member mentioned in subsection (2)(c) at a meeting of the board of the student guild.

Amendment 18 amends Clause 124 (Amendment of s 19 - Elected member's term of office) which amends section 19 of the *University of Southern Queensland Act 1998*. The amendment omits the existing Clause 124(2) and inserts new Clauses 124(2) and 124(3).

The new Clause 124(2) amends section 19(2)(a) to omit the reference to 'or reappointed'. This amendment is necessary because it is no longer possible to appoint an elected member under section 15. The new Clause 124(3) renumbers sections 19(1A) and 19(2) to become sections 19(2) and 19(3).

Amendment 19 omits existing Clause 126 and inserts new Clauses 125A and 126 into the Bill.

The new Clause 125A (Amendment of s20A - Dealing with casual vacancy in office of particular elected members) amends section 20A(5) of the *University of Southern Queensland Act 1998* to provide that despite subsection (4), if the elected member was a student the council may appoint a student to the office. This amendment means that where a casual vacancy arises in the office of an elected member who is a student, the council may appoint a student without conducting a ballot.

The new Clause 126 (Replacement of s 21 – Failure to elect or appoint elected members) replaces section 21 of the *University of Southern Queensland Act 1998* with a new section 21 (Failure to elect elected member).

Section 21(1) provides that if an entity permitted to elect an elected member does not elect a person as the elected member by a day fixed by

the council by notice given to the entity, the Minister may appoint a member of the entity as the elected member.

Section 21(2) provides that the council may, if asked by the Minister, nominate a person for appointment under subsection (1).

Section 21(3) provides that a person appointed under subsection (1) is taken to have been elected by the entity under section 15.

Section 21(4) provides that this section applies to the periodic election of members and an election required because of a casual vacancy.

The replacement of section 21 is necessary because it is no longer possible for an entity to appoint an elected member under section 15.

Amendment 20 amends Clause 138 (Amendment of sch 2 – Dictionary) of the Bill to insert a new Clause 138(3). The new Clause 138(3) amends the definition of the term '***elected member***' in Schedule 2 of the *University of Southern Queensland Act 1998* to omit the reference to 'or appointed'. This amendment is necessary as it will no longer be possible to appoint an elected member under section 15.

Amendment 21 amends Clause 149 (Amendment of s 20A - Dealing with casual vacancy in office of an elected member) which amends section 20A of the *University of the Sunshine Coast Act 1998*. The amendment amends Clause 149(1) which inserts a new section 20A(5) to provide that despite subsection (4), if the elected member was a student, the council may appoint a student to the office. This amendment means that where a casual vacancy arises in the office of an elected member who is a student, the council may appoint a student without conducting a ballot.

Amendment 22 amends the definition of the term '***elected member***' within Clause 164 (Amendment of sch 2 - Dictionary) of the Bill which amends Schedule 2 of the *University of the Sunshine Coast Act 1998*.

The existing definition of the term '***elected member***' in Clause 164 is:

- (a) generally it means a member of the council elected or appointed under section 15; and
- (b) for part 8, division 1 – see section 68.

The amendment omits the reference to 'or appointed' from the definition of '***elected member***'. This amendment removes an unnecessary reference as an elected member cannot be appointed under section 15.

Amendment 23 amends Item 1 in the amendments to the *James Cook University Act 1997* in the Schedule. The amendment omits the reference

to '21(1)' as this amendment has now been included in the new Clause 59A inserted by Amendment 8.

Amendment 24 amends Item 1 in the amendments to the *Queensland University of Technology Act 1998* in the Schedule. The amendment omits the reference to '21(1)' as this amendment has been now included in the new Clause 80B of the Bill inserted by Amendment 12.