

UNIVERSITY OF SOUTHERN QUEENSLAND BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to improve the administration and management of University of Southern Queensland by repealing and rewriting the *University of Southern Queensland Act 1989*, 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 *University of Southern Queensland Act 1989* 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 amendments necessary to 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:

- repealing the *University of Southern Queensland Act 1989*;
- reducing the number of statutes (subordinate legislation) which may be made by the university;
- streamlining the approval process of those statutes which remain;
- extending the capacity of the University to make policy on matters necessary for its good governance, but which are not of a legislative character;
- declaring the University to be a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982* which specifies the investment and borrowing powers of the University;
- declaring the University to be a statutory body for the purposes of the *Financial Administration and Audit Act 1977* which removes any requirement for separate provisions in the Bill concerning the financial operating and reporting requirements on the University;
- including in a Schedule to the Act provisions concerning conduct on and control of traffic on University land;
- no longer requiring the Governor in Council to approve a scheme set up by the University Council for the use of donated property;
- providing that at least 12 members of the University Council should be appointed before the governing body will be deemed to be properly constituted;
- writing the legislation in plain English.

Alternatives to the Bill

The two alternatives to the Bill are to make the necessary legislative changes by way of amendments to the existing *University of Southern Queensland Act 1989*; and to make no changes to the legislation, leaving the university to operate under the existing Act.

Because the existing University Act is written in outdated drafting style,

the option of making the necessary changes by way of a series of amendments 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*.

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 government officers, 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. 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 PROVISIONS

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 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 8 appointed members on the Council, and that these members must be appointed by the Governor in Council.

Clause 15 provides that there are 7 elected members on the Council, specifies the composition of this category of membership, specifies how the members are to be elected, and in the case of the Alumni Association, specifies that the Alumni Association is to appoint its representatives on the Council. In the case of the student guild, the Council may allow the guild to appoint rather than elect its representatives.

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

Clause 17 provides that the Council is taken to be properly constituted when it has 12 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 his 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 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 be elected 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 3 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 a member of the university's staff.

PART 4—BODIES CONNECTED WITH THE UNIVERSITY

Clause 33 provides that the University of Southern Queensland Student Guild is established, and gives the Guild has the legal status of a corporation.

Clause 34 provides for the composition of the Student Guild.

Clause 35 provides that, although the role and powers of the Student Guild are decided by the Council, the Guild is not the employee or agent of the University.

Clause 36 specifies the general powers of the Guild.

Clause 37 provides that the Guild 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 38 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 39 provides for the establishment and functions of the academic board of the University.

PART 5—PROPERTY AND FINANCE

Clause 40 provides a definition of “property” for the purposes of this division of the Act.

Clause 41 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 42 specifies the type of purpose the Council must prefer in selecting a designated purpose.

Clause 43 specifies that property to which a scheme applies is to be held by the University for the designated purpose.

Clause 44 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 45 provides for the amendment of an approved scheme.

Clause 46 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 47 provides that the University may agree to and carry out any conditions of a gift, grant or similar acquisition by which it takes or acquires property.

Clause 48 provides that any State land held by the University is held and may be disposed of according to the provisions of 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 49 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 50 declares the University to be a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*, under which the investment and financial accommodation powers of universities are to be regulated.

Clause 51 specifies that the University may establish or administer trust funds.

Clause 52 provides that the University may establish an investment

common fund, and the way the University is to operate such a fund.

Clause 53 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 54 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 55 specifies that the University's financial year is a calendar year.

PART 6—UNIVERSITY STATUTES

Clause 56 provides for the University to make statutes, and provides that statutes may only be made about specified matters.

Clause 57 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 Parliamentary Counsel, and does not have to be approved by the Governor in Council.

Clause 58 provides that the University must not make a statute affecting the role or powers of the Student Guild unless the Council gives the Student Guild, a copy of the proposed statute, and considers any comments made by the Student Guild on the statute.

Clause 59 provides for the Council to make University rules under a University statute, and the requirements for notification of such rules.

Clause 60 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 61 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 62 establishes the purposes of Schedule 1, which provides for the control of traffic and conduct on University land.

Clause 63 authorises the Governor in Council to make regulations under the Act.

Clause 64 specifies that a reference to the *University of Southern Queensland Act 1989* may, if the context permits, be taken to be a reference to this Act.

PART 8—REPEAL AND TRANSITIONAL

Clause 65 specifies the meaning of terms used in Part 8 of the Act, which contains arrangements pertaining to the repeal of the *University of Southern Queensland Act 1989*, and necessary transitional arrangements.

Clause 66 repeals the *University of Southern Queensland Act 1989*.

Clause 67 provides for the University, and the University of Southern Queensland Student Association established under the repealed act to continue as the University and the student guild established under the new Act.

Clause 68 declares that the assets and liabilities of a former corporation vest in the continuing corporation, and any property held in trust under a former corporation are held on the same trusts by the continuing corporation.

Clause 69 declares that any contracts entered into by or on behalf of the former corporation and all guarantees, undertakings and securities entered into by or on behalf of a former corporation, continue and may be enforced against the continuing corporation, notwithstanding the repeal of the *University of Southern Queensland Act 1989*.

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

Clause 71 provides for persons holding office under the repealed Act 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 to continue in office until the expiry of their terms of office under the repealed Act.

Clause 73 provides for the continuity of staff rights and entitlements under the continuing corporation.

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

Clause 75 provides for the constitution of the University of Southern Queensland Student Association in place before the commencement of Part 8, to continue as the Student Guild's constitution under the new Act.

Clause 76 provides for references in an Act or document in existence immediately before the commencing day to a former corporation to be a reference to the continuing corporation.

Clause 77 provides for this part of the Act, (Part 8), (other than section 72) to expire 1 year after it commences.

Schedule 1

CONTROL OF TRAFFIC AND CONDUCT ON UNIVERSITY LAND

PART 1—AUTHORISED PERSONS

Clause 1 provides for the Vice-Chancellor to appoint authorised persons 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 powers of an authorised person to be limited.

Clause 3 provides for the conditions of appointment of the authorised persons.

Clause 4 provides that the Vice-Chancellor must issue an identity card to each authorised person.

Clause 5 provides that an authorised person may exercise their powers under the legislation only if the person produces or has displayed his or her identity card.

PART 2—TRAFFIC CONTROL

Clause 6 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 7 provides for the Vice-Chancellor 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 would be included on the notice. The clause also allows the Vice-Chancellor to erect and display “regulatory notices” in the form of official traffic signs.

Clause 8 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 Vice-Chancellor 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 9 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 10 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 11 specifies how and in what order the proceeds of the sale of the vehicle must be applied.

PART 3—CONDUCT ON UNIVERSITY LAND

Clause 12 provides that a person may not be disorderly or create a disturbance on University land.

Clause 13 provides that an authorised person may direct a person to leave the University’s land or part of the University’s land if the authorised person finds the person breaching section 12 of this part of the Act, or for other specified reasons.

