

# **University Legislation Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the Bill is the *University Legislation Amendment Bill 2005*.

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

The primary policy objectives of the Bill are to:

- amend the seven Acts that establish universities in Queensland to the extent considered necessary to achieve consistency with the requirements of the Commonwealth's National Governance Protocols for higher education providers; and
- make other miscellaneous amendments to the authorising legislation of Queensland universities.

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

In 2003, the Commonwealth Government progressed significant reforms to the higher education sector, in particular reforms related to the governance arrangements of universities. Under section 33-15 of the *Higher Education Support Act 2003* (Cwlth), higher education providers are required to meet the requirements of the Commonwealth's National Governance Protocols for higher education providers ('the National Governance Protocols') to qualify for increased Commonwealth funding.

To enable Queensland universities to be eligible for increased funding from the Commonwealth, legislative amendments are required to the Acts that establish universities in Queensland to provide consistency with the requirements of the National Governance Protocols.

## **Achieving the Objectives**

The Bill amends the *Central Queensland University Act 1998*; *Griffith 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* ('the University Acts') to the extent considered necessary to achieve consistency with the requirements of the National Governance Protocols and to make other minor miscellaneous amendments.

The policy objectives of the Bill will primarily be achieved by amending the University Acts to provide:

- for the revised composition of members for each university governing body, ensuring that each governing body has no more than 22 members;
- for the functions of members of a university governing body;
- that a person is ineligible to become or continue as a member of a university governing body if they have been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth);
- each university governing body with the power to remove a member who has not complied with their functions and obligations;
- the Minister with the power to extend the terms of appointed, elected and additional members for not more than 1 year; and
- for other minor miscellaneous amendments to the University Acts.

## **Administrative costs**

The Bill institutes change in the membership and composition of all seven university governing bodies, which will necessitate all but the Council of Queensland University of Technology to be reconstituted within 1 year after the commencement.

The process of reconstituting a university governing body can incur costs for each university, for example in relation to the conduct of a ballot for elected members. It will be the responsibility of each of the six universities to meet the costs associated with the reconstitution of their governing bodies.

## **Fundamental Legislative Principles**

Aspects of the Bill raise Fundamental Legislative Principle issues. Under section 4(2)(a) of the *Legislative Standards Act 1992*, legislation must have sufficient regard to the rights and liberties of individuals. The amendments of the Bill that raise fundamental legislative principle issues are outlined below:

### ***Removal of a member of a university governing body***

Clauses 16, 22, 39, 42, 62, 66, 83, 86, 104, 110, 129, 133, 153 and 159 give each university governing body the power to remove an elected, appointed, additional or official member from office, if the governing body is satisfied the member has not complied with their functions or their conduct obligations which apply to members under the university's approved code of conduct made under the *Public Sector Ethics Act 1994*.

The process for removing a member requires that the equivalent of two-thirds of the total number of members must be satisfied that the member has not complied with their functions or conduct obligations.

It is not considered appropriate to incorporate an appeals process for a member who has been removed by a governing body as currently the University Acts do not provide an appeal avenue for a decision to remove a member. However, each university governing body will have the power to make a statute about the process for removing a member from office and members will also be able to seek judicial review of the decision made by the governing body.

### ***Reconstitution of governing body***

In 2004, the governing bodies of Central Queensland University, James Cook University, University of Southern Queensland and the Queensland University of Technology were reconstituted under the existing legislative arrangements. Passage of this Bill will require all but the Council of the Queensland University of Technology to be reconstituted, which therefore means that current members on the other six university governing bodies will not serve a full term.

Members of university governing bodies are not remunerated for being a member. Given that university governing bodies have been extensively consulted during the development of the National Governance Protocols and the Bill, current members cannot have a reasonable expectation that they would serve their full term.

Accordingly, the Bill does not provide that members will be entitled to claim compensation for having their term of office cut short, because they

will suffer no financial disadvantage and considerable effort has been made to advise them of the implications of implementing the legislative amendments considered necessary to achieve consistency with the National Governance Protocols.

### ***Protection from liability for members***

Clauses 25, 45, 69, 89, 113, 136 and 162 of the Bill provide that a member of the university governing body is not civilly liable for an act or omission, made honestly and without negligence under the relevant University Act.

It is not considered appropriate for a member to be made personally liable as a consequence of carrying out his or her responsibilities under the relevant University Act in good faith. As such, the provisions in the Bill prevent civil liability from being attached to a member. Instead liability will attach to the university. The proposed immunity does not extend to a member who has been negligent, even though they may have acted in good faith.

### **Consultation**

In early 2004, all Queensland universities were given the opportunity to propose the legislative amendments considered necessary to achieve consistency with the requirements of the National Governance Protocols and other minor miscellaneous amendments.

A consultation draft of the Bill was released to the following key stakeholders in November 2004:

- Central Queensland University;
- Griffith University;
- James Cook University;
- National Tertiary Education Union;
- Queensland University of Technology;
- Student Association of Central Queensland University;
- Student Association of James Cook University;
- Student Guild of Griffith University;
- Student Guild of Queensland University of Technology;
- Student Guild of the University of Southern Queensland;
- Student Guild of the University of the Sunshine Coast;

- Student Representative Council – Griffith University;
- Student Union of University of Queensland;
- University of Queensland;
- University of Southern Queensland;
- University of the Sunshine Coast.

The following government departments and agencies were also consulted in relation to the draft Bill:

- Commonwealth Department of Education, Science and Training;
- Department of Communities;
- Department of Employment and Training;
- Department of Justice and Attorney-General;
- Department of Industrial Relations;
- Department of the Premier and Cabinet;
- Queensland Police Service;
- Department of State Development and Innovation;
- Queensland Health;
- Queensland Treasury.

The consultation draft of the Bill was also provided to the Commonwealth Minister for Education, Science and Training.

In early 2005, a second consultation draft of the Bill was provided to all seven universities, the Commonwealth Department of Education, Science and Training and the Commonwealth Minister for Education, Science and Training.

## Notes on Provisions

### Part 1 Preliminary

#### Short title

Clause 1 sets out the short title of the Act as the *University Legislation Amendment Act 2005*.

### Part 2 Amendment of Central Queensland University Act 1998

Clause 2 provides that this part amends the *Central Queensland University Act 1998*.

Clause 3 amends section 11 (Delegation). The clause inserts a new section 11(3) to enable the council to delegate its power to approve the spending of funds available to the university by way of bequest, donation or special grant. Delegation of the council's power to approve expenditure available from these sources is limited to matters not more than \$100 000.

Previously, the council has been unable to delegate the approval of any expenditure of funds available to the university by way of bequest, donation or special grant. This restriction has resulted in delays for approval of minor expenditure from these sources of funding. The new section will provide the council with the flexibility to delegate the approval of expenditure of funds from these sources of not more than \$100 000, whilst ensuring that major expenditures, will continue to receive council's scrutiny and approval.

Clause 4 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of council) provides that the council consists of official, appointed, elected and additional members. Previously, it was optional for the council to include additional members. The new section will require the council to include additional members which is necessary given that the new section 16 (Additional members) requires the council to appoint additional members.

The clause also omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that the council has 3 official members, namely the chancellor, vice-chancellor and the president of the academic board. Previously there were 5 official members. The new section is necessary because Protocol 3 provides that apart from the chancellor, vice-chancellor and presiding member of the academic board, all members of a university governing body must be elected or appointed.

Clause 5 amends section 14 (Appointed members) to reduce the number of appointed members. The clause amends section 14(1) to reduce the number of appointed members from 8 to 5.

Clause 6 amends section 15 (Elected members) to alter the composition of elected members.

The clause amends section 15(1) to reduce the total number of elected members from 7 to 3. The clause also omits existing sections 15(2)(a) and 15(2)(b) and inserts new sections 15(2)(a) and 15(2)(b). The new sections 15(2)(a) and 15(2)(b) provide that there is 1 member of the full-time or part-time academic staff and 1 member of the full-time or part-time general staff.

The clause also omits the existing sections 15(3)(a) and 15(3)(b) and inserts new sections 15(3)(a) and 15(3)(b). The new section 15(3)(a) provides that for the elected member mentioned in section 15(2)(a), all the members of the full-time academic staff and those members of the part-time academic staff eligible under a university statute may vote. The section also provides that if a statute about the eligibility of part-time academic staff to vote is not in force, all the members of the full-time and part-time academic staff may vote. It is not intended that casual staff be able to stand, or vote in elections to the council.

The new section 15(3)(b) provides that for an elected member mentioned in section 15(2)(b), all the members of the full-time general staff and those members of the part-time general staff eligible under a university statute, may vote. The section also provides that if a statute about the eligibility of part-time general staff to vote is not in force, all the members of the full-time and part-time general staff may vote. It is not intended that casual staff be able to stand, or vote in elections to the council.

The convocation previously elected 2 members of the convocation to be elected members of the council. However, the convocation no longer has a role in selecting persons to be members of the council and consequently, the clause omits:

- sections 15(2)(d) and 15(3)(d), which relate to the election of two members of the convocation as elected members; and
- section 15(4).

The clause then inserts a reworded section 15(4) which continues the existing ability of the council to authorise the council of the student association to appoint the elected member mentioned in section 15(2)(c) at a meeting of the council of the student association.

Clause 7 omits the existing section 16 and inserts a new section 16. The new section 16 (Additional members) provides that the council must appoint 4 additional members, 2 of which must be graduates of the university. The new section 16 continues the requirement that an additional member must not be a student or a member of the university's academic or general staff.

Previously, section 16 made it optional for the council to appoint additional members. The new section 16 will require the council to appoint additional members. This is considered necessary because the council will now directly appoint graduate representatives to the council as additional members. Also, the total number of members on the council will reduce from 22 to 15 and by requiring the council to appoint additional members it is ensured that the council will have the full complement of 15 members.

Clause 8 amends section 17 (When council is taken to be properly constituted) as a consequence of the amendments to sections 13, 14, 15 and 16 which have reduced the number of members on the council. The clause provides that the council is properly constituted it has 8 or more members, whether they be additional appointed, elected or official members.

Clause 9 amends section 18 (Appointed member's term of office) to provide that an appointed member is to be appointed for a term, not more than 4 years. Previously, the Act provided that an appointed member was appointed for a term, not more than 3 years. The longer term of office will provide greater continuity in membership.

Clause 10 amends section 19 (Elected member's term of office) to:

- omit the existing section 19(1), which provides that an elected holds office for 3 years and insert a new section 19(1). The new section 19(1) provides that the elected members mentioned in sections 15(2)(a) and 15(2)(b), hold office for 4 years.
- insert a new section 19(1A) to provide that the elected member elected by students, holds office for 2 years.



- renumber section 19(1A) and the existing section 19(2), as sections 19(2) and 19(3).

The longer term of office for elected members mentioned in sections 15(2)(a) and 15(2)(b) will provide greater continuity in membership.

The new section 19(1A) limits the term of office for the elected member elected by students to 2 years. A term of 2 years is considered more appropriate for the elected member elected by students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 11 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is to be appointed for a term of not more than 4 years, as decided by the council. Previously the Act provided that an additional member was appointed for a term of not more than 3 years, as decided by the council. The longer term of office will provide greater continuity in membership.

Clause 12 amends section 20A (Dealing with casual vacancy in office of an elected member) to omit existing sections 20A(5) and 20A(7) as a consequence of the amendments to section 15, which remove the role of the convocation in electing elected members.

The clause then inserts a reworded section 20A(5) which continues the existing ability of the council to authorise the council of the student association to appoint a student to fill a casual vacancy in the office of an elected member elected by students at a meeting of the council of the student association without conducting a ballot as required under section 20A(4).

Clause 13 amends section 21 (Failure to elect or appoint elected members) to omit section 21(1) and insert a new section 21(1). The new section 21(1) provides that where an entity does not elect or appoint a person as the elected member by a day fixed by the council, the Minister may appoint a member of the entity as the elected member.

Previously, an entity would be required to elect or appoint more than 1 member given the requirements of section 15. The amendments to section 15 means that an entity will only ever be required to elect or appoint 1 member and therefore the new reworded section 21(1) changes the references from the plural to the singular.

Clause 14 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of council).

The new section 23(1)(a) provides that a person is not eligible to become an elected, appointed or additional member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 23(1)(b) provides that a person is not eligible to become an elected, appointed or additional member if the person has a conviction for an indictable offence, other than an offence which makes the person ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an elected, appointed or additional member if they have been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that a person was ineligible to become an elected, appointed or additional member if they had been found guilty of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term '**conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term '**spent conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as a member would result in the person being a member for 12 years or more, whether continuously or not. This new section is required to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction because an official member continues as a member for as long as they hold the position of chancellor, vice-chancellor or president of the academic board.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be elected or appointed as an elected, appointed or additional member.

Section 23(4) provides that a person's ineligibility to become an elected, appointed or additional member under section 23(1)(b) is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to become an appointed, elected or additional member if the person has a conviction for an indictable offence.

Clause 15 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h).

The new sections 24(1)(f) and 24(1)(g) provide that the office of an elected, appointed or additional member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to continue as an appointed, elected or additional member if the person has been convicted of an indictable offence.

Clause 16 inserts new part 2, divisions 3A (Members' function and removing elected, appointed and additional members from office) and 3B (Extending terms of office) after section 26. This clause also inserts new sections 26A to 26C. Notes on these sections are as follows -

- The new section 26A (Member's function, and obligations about function) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university; and
- exercise reasonable skill, care and diligence; and
- disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Council may remove member from office) enables the council to remove an elected, appointed or additional member from office.

Section 26B(1) provides that the council may remove an elected, appointed or additional member from office if at least 10 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the council decides to remove a member from office under section 26B(1), as soon as practicable the council must give the member a notice of the decision and the reasons for the decision. If the council has decided to remove an appointed member, the council must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the council gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the council's power to remove an appointed member from office under this section does not limit the Governor in Council's powers to remove, suspend, reinstate or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) of the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of elected, appointed and additional members.

Section 26C(1) provides that the Minister may extend the terms of office of elected, appointed and additional members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the council to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the council having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the council.

Section 26C(2) requires that the Minister must extend the terms of office of all elected, appointed or additional members by the same amount. This ensures equity between all members of the council.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office for appointed, elected and additional members.

Clause 17 amends section 30 (Chancellor) to renumber the existing section 30(4) to become section 30(5). The clause then inserts a new section 30(4) to provide that a person elected as chancellor must not be a student or a member of the university's academic staff or general staff. The new section 30(4) will assist in ensuring that there is a majority of external persons on the council as required by Protocol 5.

Clause 18 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 4 years as fixed by the council. Previously, the Act provided that the deputy chancellor held office for the term, not longer than 3 years as fixed by the council. This amendment will ensure parity with the terms of office for most members, which will now be 4 years instead of 3 years.

Clause 19 omits part 4, division 1 (Convocation).

Clause 20 inserts a new section 40AA after section 40. The new section 40AA (President of academic board) establishes that:

- there is a president of the academic board;
- the council must decide who is the president; and
- the president holds office for the term, not longer than 3 years, as decided by the council.

Clause 21 amends section 40A (Excluded matters for Corporations legislation). The clause omits section 40A(1)(a) and renumbers sections 40A(1)(b) and 40A(1)(c) as sections 40A(1)(a) and 40A(1)(b).

Clause 22 inserts a new part 4A into the Act. The new part 4A (Matters relating to offices of chancellor, deputy chancellor, vice-chancellor and president) consists of new sections 40C to 40F. Notes on these sections are as follows –

- The new section 40C (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor, vice-chancellor or president and the discretionary power of the council.

Section 40C(1)(a) provides that a person cannot become or continue as chancellor, vice-chancellor or president if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 40C(1)(b) provides that subject to sections 40C(2) and 40C(4), a person cannot become or continue as chancellor, vice-chancellor or president if the person has a conviction for an indictable offence, other than an offence in relation to which the person is disqualified from office under section 40C(1)(a).

This section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor, vice-chancellor and president with the requirements for elected, appointed or additional members, in that a person cannot become or continue as an elected, appointed or additional member if they have a conviction or have been convicted of an indictable offence, other than an offence which disqualifies the person from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 40C(2) provides that the council may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in section 40C(1)(b):

- restore a person as chancellor, vice-chancellor or president by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor, vice-chancellor or president despite the conviction.

Section 40C(3) provides that on the day the person receives the notice they are restored as chancellor, vice-chancellor or president and the term of office for the person who has been elected or appointed to fill the vacancy, ends.

Section 40C(4) provides that if a person is restored as the chancellor, vice-chancellor or president, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 40D (Council may remove chancellor, vice-chancellor or president from office) enables the council to remove the chancellor, vice-chancellor or president from office.

Section 40D(1) provides that the council may remove the chancellor, vice-chancellor or president from office if at least 10 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 40D(2) requires that if the council decides to remove the chancellor, vice-chancellor or president from office under section 40D(1), the council must give the chancellor, vice-chancellor or president notice of the decision and the reasons for it as soon as practicable.

Section 40D(3) clarifies that the chancellor's, vice-chancellor's or president's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

- The new section 40E (Particular matters about removal of vice-chancellor) provides in section 40E(1) that the council may remove the vice-chancellor from office under section 40D despite the vice-chancellor's terms of appointment. Section 40E(2) provides that a decision by the council to remove the vice-chancellor from office under section 40D does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 40E(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the appointment had been ended as permitted under the terms of appointment, or his or her term of office had ended.

The new section 40F (Vacation of office) clarifies that the office of the chancellor, vice-chancellor or president becomes vacant if a person cannot continue in the particular office under section 40C or the person has been removed from office under section 40D. Section 40F also clarifies the circumstances under which the office of the deputy chancellor becomes vacant.

Clause 23 amends section 57 (Making of university statutes). The clause:

- omits sections 57(2)(e) which provides that the council may make a statute about the membership of the convocation;
- amends section 57(2)(f) to provide that the council may make a statute about the conduct of a ballot for the election of elected members, including the voting rights of part-time academic staff and part-time general staff;
- inserts new sections 57(2)(fa) to provide that the council may make a statute about the process for removing a person from office under new sections 26B or 40D;
- inserts new section 57(2)(fb) to provide that the council may make a statute about the spending of funds under a delegation under the new section 11(3);
- renumbers sections 57(2)(f) to 57(2)(j) to become sections 57(2)(e) to 57(2)(k).

Clause 24 amends section 61 (Forming and taking part in corporations). The clause amends section 61(1) to clarify that the university may be a



member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 61(1)(a) to 61(1)(g).

Previously, the Act provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in sections 61(1)(a) to 61(1)(g). The amendment clarifies that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 61(1)(a) to 61(1)(g).

Clause 25 inserts new sections 62A (Protection from liability), 62B (Report about person's criminal history) and 62C (Delegation by Minister) after section 62. Notes on these sections are as follows –

- The new section 62A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 62A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.
- The new section 62B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member. This section is necessary to give the Minister the legislative authority to request criminal history information about persons the Minister is considering recommending to the Governor in Council for appointment as appointed members.

Section 62B(2) provides that the council may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor, vice-chancellor or president, or an elected or additional member.

Section 62B(3) provides that the commissioner of police must comply with a request made under section 62B(1) or section 62B(2).

Section 62B(4) provides that the Minister or the council may only make a request under section 62B(1) or section 62B(2)

about a person, if the person has given their written consent for the request.

Section 62B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 62B(1) or section 62B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 62B(6) requires that the Minister or the council must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 62B(7) defines the term '*criminal history*' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed or set aside convictions are not included as part of a person's criminal history.

- The new section 62C provides that the Minister may delegate the Minister's power under section 62B(1) to an appropriately qualified officer of the department.

Clause 26 inserts a new division 2 (Transitional provisions for the University Legislation Amendment Act 2005) into Part 8. This clause also inserts new sections 79 to 89. Notes on these provisions are as follows-

## **Subdivision 1 Preliminary**

- The new section 79 (Definitions for div 2) provides the definitions for the division.

The term '*commencement*' is defined to mean the commencement of the provision in which the term is used.

The term '*new additional members*' is referenced to section 85 and means those persons appointed by the council as additional members within 1 year after the commencement of this Act.

The term '*new appointed members*' is referenced to section 81(2) and means those persons appointed by the Governor in Council as appointed members within 1 year after the commencement of this Act.

The term *'pre-amended Act'* is defined to mean the Act as in force before the commencement of the *University Legislation Amendment Act 2005*, part 2.

## **Subdivision 2 Provisions about council membership**

- The new section 80 (Continuation of official members) provides that despite the new section 13 (Official members), the chief executive or the chief executive's nominee and the president of the student association continue as official members until the new appointed members' terms of office start.

This ensures that the chief executive or the chief executive's nominee and the president of the student association will continue as official members after the commencement of this Act, until the new appointed members' terms of office start.

- The new section 81 (Appointment of new appointed members) provides that within 1 year after the commencement of this Act, the Minister must recommend to the Governor in Council, 5 persons for appointment under section 14(2) as appointed members.
- The new section 82 (Continuation, and term of office, of appointed members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite section 14(1), the person continues as an appointed member; and
  - despite section 18, the person's term of office ends when the new appointed members' terms of office start, unless it sooner becomes vacant.

This section ensures that the 8 appointed members appointed under the pre-amended Act continue as appointed members after the commencement of this Act. The section also provides that the terms of office for these 8 appointed members end when the new appointed members' terms of office start.

- The new section 83 (Continuation of elected members) applies to a person who was an elected member immediately before the commencement of this Act. The section provides that:
  - despite sections 15(1) and 15(2), the person continues as an elected member until the person's term of office ends under section 84 or sooner becomes vacant; and
  - despite sections 19(1) and 19(2), the person's term of office is 3 years.

This section ensures that the 7 elected members elected under the pre-amended Act continue as elected members after the commencement of this Act. The section also provides that the terms of office for these 7 elected members ends under section 84.

- The new section 84 (Ballot, and term of office, for elected members) provides that:
  - at least 14 days before the new appointed members are appointed, a ballot under section 15(3) of the post-amended Act must be conducted for elected members;
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(a) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(a) of the post-amended Act is elected under the ballot, despite section 83(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(b) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(b) of the post-amended Act is elected under the ballot, despite section 83(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(c) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(c) of the post-amended Act is elected under the ballot, despite section 83(3).
  - the term of office for a person who immediately before the ballot is conducted, is an elected member

mentioned in section 15(2)(d) of the pre-amended Act, ends when the new additional members' terms of office start, despite section 83(3);

- a person is taken to be elected under the ballot when the new appointed members' terms of office start;
  - despite section 19(3), the term of office of a person elected under the ballot starts when the new appointed members' terms of office start;
  - the term '*post-amended Act*' is defined for this section to mean the Act as in force after the commencement of the *University Legislation Amendment Act 2005*, part 2.
- The new section 85 (Appointment of new additional members) provides that within 1 year after the commencement of this Act, the council must appoint 4 persons as additional members under section 16.
  - The new section 86 (Continuation, and term of office, of additional members) applies to a person who was an additional member immediately before the commencement of this Act. The section provides that:
    - the person continues as an additional member; and
    - despite section 20, the person's term of office ends when the new additional members' terms of office start, unless it sooner becomes vacant.

This section ensures that if the council had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional members' terms of office start.

- The new section 87 (Council need not include additional members) provides that despite section 12 (Membership of council), the council does not have to include additional members before the new additional members' terms of office start. This section arises as a consequence of section 85, which provides that the council must appoint 4 additional members within 1 year after the commencement of this Act. Until the new

additional members' terms of office start, the council will not be required to have additional members.

- The new section 88 (Dealing with casual vacancy in office of elected member) provides that where a casual vacancy arises in the office of an elected member after the commencement of this Act but before the ballot is conducted in section 84(1), the vacancy is to be filled as if part 2 of this Act had not commenced.

### **Subdivision 3 Constitution of council**

- The new section 89 (Constitution of council) provides that despite section 17 and until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 12 or more members. This section ensures that until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 12 or more members.

Clause 27 amends Schedule 2 (Dictionary) to replace the definition of '*indictable offence*', insert definitions for new terms and insert references to existing definitions contained in section 66 of the Act.

The terms '*commencement*', '*new additional members*', '*new appointed members*' and '*pre-amended Act*' are referenced to section 79 (Definitions for division 2) and have the meaning given in that section.

The terms '*commencing day*', '*continuing corporation*', '*former corporation*', '*previous council*', '*repealed Act*' and '*union*' are referenced to the existing section 66 (Definitions for division 1) which contains the definitions for these terms.

The term '*conduct obligation*' for a member means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '*conviction*' is defined to mean a conviction other than a spent conviction.

The term '*indictable offence*' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code,

applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of the person's criminal history.

The term '*notice*' is defined to mean written notice.

The term '*president*' means the president of the academic board.

The term '*spent conviction*' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

## **Part 3 Amendment of Griffith University Act 1998**

Clause 28 provides that this part amends the *Griffith University Act 1998*.

Clause 29 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of council) provides that the council consists of official, appointed, elected and additional members. Previously, it was optional for the council to include additional members. The new section will require the council to include additional members which is necessary given that the new section 16 (Additional members) requires the council to appoint additional members.

The clause also omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that the council has two official members, namely the chancellor and the vice-chancellor. Previously there were 3 official members. The new section is necessary because Protocol 3 provides that apart from the chancellor, vice-chancellor and the presiding member of the academic board, all members of a university governing body must be elected or appointed.

Clause 30 amends section 14 (Appointed members) to reduce the number of appointed members. The clause amends section 14(1) to reduce the number of appointed members from 8 to 7.

Clause 31 amends section 15 (Elected members) to alter the composition of elected members.

The clause amends:

- section 15(1) to reduce the total number of elected members from 12 to 5;

- section 15(2)(a) to reduce the number of academic staff from 4 to 2;
- section 15(2)(b) to reduce the number of general staff from 2 to 1; and
- section 15(3) to omit ‘mentioned in subsection (2)(a) to (2)(d)’.

The clause omits the existing sections 15(2)(c) and 15(2)(d) and inserts new sections 15(2)(c) and 15(2)(d). The new sections 15(2)(c) and 15(2)(d) provide that there is:

- 1 undergraduate student elected member, other than a person eligible under sections 15(2)(a) and 15(2)(b); and
- 1 postgraduate student elected member, other than a person eligible under sections 15(2)(a) and 15(2)(b).

The clause then amends:

- section 15(3)(c) to provide that all undergraduate students may vote in the ballot for the undergraduate student member mentioned in the new section 15(2)(c); and
- section 15(3)(d) to provide that all postgraduate students may vote in the ballot for the postgraduate student member mentioned in the section 15(2)(d).

Clause 32 omits section 16 and inserts a new section 16. The new section 16 (Additional members) provides that the council must appoint 4 additional members, 2 of which must be graduates of the university. The new section 16 continues the requirement that an additional member must not be a student or a member of the university’s academic or general staff.

Previously, section 16 made it optional for the council to appoint additional members. The new section 16 will require the council to appoint additional members. This is considered necessary because the council will now directly appoint graduate representatives to the council as additional members. Also, the total number of members on the council will reduce from 25 to 18 and by requiring the council to appoint additional members it is ensured that the council will have the full complement of 18 members.

Clause 33 amends section 17 (When council is taken to be properly constituted) as a consequence of the amendments to section 13, 14, 15 and 16 which have reduced the number of members on the council. The clause provides that the council is properly constituted when it has 11 or more members, whether they be additional, appointed, elected or official members.



Clause 34 amends section 18 (Appointed member's term of office) to provide that an appointed member is to be appointed for a term, not more than 4 years. Previously, the Act provided that an appointed member was appointed for a term, not more than 3 years. The longer term of office will provide greater continuity in membership.

Clause 35 amends section 19 (Elected member's term of office) to:

- omit the existing section 19(1) and insert a new section 19(1). The existing section 19(1) provides that the elected members elected by the academic staff, general staff and students hold office for 2 years. The new section 19(1) provides that the elected members elected by the academic staff or general staff hold office for 4 years.
- omit the existing section 19(2) and insert a new section 19(2). The new section 19(2) provides that the elected members elected by undergraduate and postgraduate students hold office for 2 years.

The longer term of office for elected members elected by the academic staff or general staff will provide greater continuity in membership.

The new section 19(2) limits the term of office for the elected members elected by undergraduate and postgraduate students to 2 years. A term of 2 years is considered more appropriate for the elected members elected by undergraduate and postgraduate students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 36 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is appointed for a term of not more than 4 years, as decided by the council. Previously, the Act provided that an additional member was appointed for a term of not more than 3 years, as decided by the council. The longer term of office will provide greater continuity in membership.

Clause 37 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of council).

The new section 23(1)(a) provides that person is not eligible to become an elected, appointed or additional member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 23(1)(b) provides that a person is not eligible to become an elected, appointed or additional member if the person has a conviction for an

indictable offence, other than an offence which makes the person ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an elected, appointed or additional member if they are disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that a person was ineligible to become an elected, appointed or additional member if they had been found guilty of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term '**conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term '**spent conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as a member would result in the person being a member for 12 years or more, whether continuously or not. This new section is necessary to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction because an official member continues as a member for as long as they hold the position of chancellor or vice-chancellor.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be elected or appointed as an elected, appointed or additional member.

Section 23(4) provides that a person's ineligibility to become an elected, appointed or additional member under section 23(1)(b), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to become an appointed, elected or additional member if the person has a conviction for an indictable offence.

Clause 38 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h). The new sections 24(1)(f) and 24(1)(g) provide that the office of an elected, appointed or additional member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to continue as an appointed, elected or additional member if the person is convicted of an indictable offence.

Clause 39 inserts new part 2, divisions 3A (Members' function and removing elected, appointed and additional members from office) and 3B (Extending terms of office) after section 26. This clause also inserts new sections 26A to 26C. Notes on these sections as follows –

- The new section 26A (Member's function, and obligations about function) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university;  
and
- exercise reasonable skill, care and diligence; and

- disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Council may remove member from office) enables the council to remove an elected, appointed or additional member from office.

Section 26B(1) provides that the council may remove an elected, appointed or additional member from office if at least 12 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the council decides to remove a member from office under section 26B(1), as soon as practicable the council must give the member a notice of the decision and the reasons for the decision. If the council has decided to remove an appointed member, the council must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the council gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the council's power to remove an appointed member from office under this section does not limit the Governor in Council's powers to remove, suspend, reinstate or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) of the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of elected, appointed and additional members.

Section 26C(1) provides that the Minister may extend the terms of office of elected, appointed and additional members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the council to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the council having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the council.

Section 26C(2) requires that the Minister must extend the terms of office of all elected, appointed or additional members by the same amount. This ensures equity between all members of the council.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office for appointed, elected and additional members.

Clause 40 amends section 30 (Chancellor) to renumber the existing section 30(4) to become section 30(5). The clause then inserts a new section 30(4) to provide that a person elected as chancellor must not be a student or a member of the university's academic staff or general staff. The new section 30(4) will assist in ensuring that there is a majority of external persons on the council as required by Protocol 5.

Clause 41 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 4 years as fixed by the council. Previously, the Act provided that the deputy chancellor held office for the term, not longer than 3 years as fixed by the council. This amendment will ensure parity with the terms of office for most members, which will now be 4 years instead of 3 years.

Clause 42 inserts a new part 3, division 2 after section 32. The new division 2 (Matters about disqualification or removal from office) consists of new sections 32A to 32D. Notes on these sections are as follows -

- The new section 32A (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor or the vice-chancellor and the discretionary power of the council.

Section 32A(1)(a) provides that a person cannot become or continue as chancellor or vice-chancellor if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 32A(1)(b) provides that subject to sections 32A(2) and 32A(4), a person cannot become or continue as chancellor or vice-chancellor if the person has a conviction for an indictable offence, other than an offence in relation to which the person is disqualified from office under section 32A(1)(a).

This section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor and vice-chancellor with the requirements for elected, appointed and additional members, in that a person cannot become or continue as an elected, appointed or additional member if they have a conviction or have been convicted of an indictable offence, other than an offence which disqualifies the person from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 32A(2) provides that the council may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in section 32A(1)(b):

- restore a person as chancellor or vice-chancellor by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor or vice-chancellor despite the conviction.

Section 32A(3) provides that on the day the person receives the notice they are restored as chancellor or vice-chancellor and the

term of office for the person who has been elected or appointed to fill the vacancy, ends.

Section 32A(4) provides that if a person is restored as the chancellor or vice-chancellor, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 32B (Council may remove chancellor or vice-chancellor) enables the council to remove the chancellor or the vice-chancellor from office.

Section 32B(1) provides that the council may remove the chancellor or the vice-chancellor from office if at least 12 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 32B(2) requires that if the council decides to remove the chancellor or vice-chancellor from office under section 32B(1), the council must give the chancellor or vice-chancellor notice of the decision and the reasons for it as soon as practicable.

Section 32B(3) clarifies that the chancellor's or vice-chancellor's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, which ever is the later of the two.

- The new section 32C (Particular matters about removal of vice-chancellor) provides in section 32C(1) that the council may remove the vice-chancellor from office under section 32B despite the vice-chancellor's terms of appointment. The new section 32C(2) provides that the decision by the council to remove the vice-chancellor from office under section 32B does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 32C(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the

appointment had been ended as permitted under the terms of appointment, or his or her term of office had ended.

- The new section 32D (Vacation of office) clarifies that the office of the chancellor or vice-chancellor becomes vacant if a person cannot continue in the particular office under section 32A or the person has been removed from office under section 32B. Section 32D also clarifies the circumstances under which the office of the deputy chancellor becomes vacant.

Clause 43 amends section 61 (Making of university statutes) to renumber sections 61(2)(g) to 61(2)(i) to become sections 61(2)(h) to 62(2)(j). The clause also inserts a new section 61(2)(g) to provide that the council may make a statute about the process for removing a person from office under section 26B or 32B.

Clause 44 amends section 65 (Forming and taking part in corporations). The clause amends section 65(1) to clarify that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 65(1)(a) to 65(1)(g).

Previously, the Act provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in 65(1)(a) to 65(1)(g). The amendment clarifies that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 65(1)(a) to 61(1)(g).

Clause 45 inserts new sections 66A (Protection from liability), 66B (Report about person's criminal history) and 66C (Delegation by Minister) after section 66. Notes on these sections are as follows-

- The new section 66A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 66A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.
- The new section 66B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member.



This section is necessary to give the Minister the legislative authority to request criminal history information about persons the Minister is considering recommending to the Governor in Council for appointment as appointed members.

Section 66B(2) provides that the council may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor or vice-chancellor, or an elected or additional member.

Section 66B(3) provides that the commissioner of police must comply with a request made under section 66B(1) or section 66B(2).

Section 66B(4) provides that the Minister or the council may only make a request under section 66B(1) or section 66B(2) about a person, if the person has given their written consent for the request.

Section 66B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 66B(1) or section 66B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 66B(6) requires that the Minister or the council must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 66B(7) defines the term '*criminal history*' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed or set aside convictions are not included as part of a person's criminal history.

- The new section 66C provides that the Minister may delegate the Minister's power under section 66B(1) to an appropriately qualified officer of the department.

Clause 46 omits the existing headings of part 8 and part 8, division 1 and inserts new headings. The new headings are as follows:

## **Part 8                    Transitional provisions**

### **Division 1                Transitional provisions for the Education (Miscellaneous Amendments) Act 2002**

The clause then renumbers the existing divisions 1, 2, 3 and 4 to become subdivisions 1, 2, 3 and 4.

The clause also omits the existing headings of divisions 2, 3 and 4 and inserts the following headings for subdivisions 1, 2, 3 and 4:

#### **Subdivision 1    Preliminary**

#### **Subdivision 2    Provisions about the council**

#### **Subdivision 3    Provisions about Gold Coast student body**

#### **Subdivision 4    Provision about colleges**

Clause 47 inserts a new part 8, division 2 (Transitional provisions for the University Legislation Amendment Act 2005). The new division 2 consists of new sections 81 to 91. Notes on these provisions are as follows -

#### **Subdivision 1    Preliminary**

- The new section 81 (Definitions for div 2) provides the definitions for the division.

The term '*commencement*' means the commencement of the provision in which the term is used.

The term '*new additional members*' is referenced to section 87 and means those persons appointed by the council as additional members within 1 year after the commencement of this Act.

The term '*new appointed members*' is referenced to section 83(2) and means those persons appointed by the Governor in Council as appointed members within 1 year after the commencement of this Act.

The term '*pre-amended Act*' is defined to mean the Act, as in force before the commencement of the *University Legislation Amendment Act 2005*, part 3.

## **Subdivision 2 Provisions about council membership**

- The new section 82 (Continuation of official member) provides that despite the new section 13 (Official members), the chief executive or the chief executive's nominee continues as an official member until the new appointed members' terms of office start.

This ensures that the chief executive or the chief executive's nominee will continue as an official member after the commencement of this Act, until the new appointed members' terms of office start.

- The new section 83 (Appointment of new appointed members) provides that within 1 year after the commencement of this Act, the Minister must recommend to the Governor in Council, 7 persons for appointment under section 14(2), as appointed members.
- The new section 84 (Continuation, and term of office, of appointed members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite section 14(1), the person continues as an appointed member; and
  - despite section 18, the person's term of office ends when the new appointed members' terms of office start, unless it sooner becomes vacant.

This section ensures that the 8 appointed members appointed under pre-amended Act continue as appointed members after the commencement of this Act. The section also provides that the terms of office for these 8 appointed members end when the new appointed members' terms of office start.

- The new section 85 (Continuation of elected members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite sections 15(1) and 15(2), the person continues as an elected member until the person's term of office ends under section 86 or unless it sooner becomes vacant; and
  - despite sections 19(1) and 19(2), the person's term of office is 3 years.

This ensures that the 12 elected members elected under the pre-amended Act continue as elected members after the commencement of this Act. The section also provides that the terms of office for these 12 elected members end under section 86.

- The new section 86 (Ballot, and term of office, for elected members) provides that:
  - at least 14 days before the new appointed members are appointed, a ballot under section 15(3) of the post-amended Act must be conducted for elected members;
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(a) of the pre-amended Act, ends when the elected members mentioned in section 15(2)(a) of the post-amended Act are elected under the ballot, despite section 85(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(b) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(b) of the post-amended Act is elected under the ballot, despite section 85(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member

mentioned in section 15(2)(c) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(c) of the post-amended Act is elected under the ballot, despite section 85(3);

- the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(d) of the pre-amended Act, ends when the new additional members' terms of office start, despite section 85(3);
  - a person is taken to be elected under the ballot when the new appointed members' terms of office start;
  - despite section 19(3), the term of office of a person elected under the ballot starts when the new appointed members' terms of office start; and
  - the term '*post-amended Act*' is defined for this section to mean the Act as in force after the commencement of the *University Legislation Amendment Act 2005*, part 3.
- The new section 87 (Appointment of new additional members) provides that within 1 year after the commencement of this Act, the council must appoint 4 persons as additional members under section 16.
  - The new section 88 (Continuation, and term of office, of additional members) applies to a person who was an additional member immediately before the commencement of this Act. The section provides that:
    - the person continues as an additional member; and
    - despite section 20, the person's term of office ends when the new additional members' terms of office start, unless it sooner becomes vacant.

This section ensures that if the council had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional members' terms of office start.

- The new section 89 (Council need not include additional members) provides that despite the new section 12 (Membership of council), the council does not have to include additional members before the new additional members' terms of office start. This section arises as a consequence of section 87, which provides that the council must appoint 4 additional members within 1 year after the commencement of this Act. Until the new additional members' terms of office start, the council will not be required to have additional members.
- The new section 90 (Dealing with casual vacancy in office of elected member) provides that where a casual vacancy arises in the office of an elected member after the commencement of this Act but before the ballot is conducted in section 86(1), the vacancy is to be filled as if part 3 of this Act had not commenced.

### **Subdivision 3 Constitution of council**

- The new section 91 (Constitution of council) provides that despite section 17 and until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 15 or more members. This section ensures that until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 15 or more members.

Clause 48 amends Schedule 2 (Dictionary) to replace the definition for '*indictable offence*', insert definitions for new terms and insert references to existing definitions contained in section 70.

The terms '*college*', '*Gold Coast college*' and '*Gold Coast student body*' are referenced to the existing section 70, which contains the definitions for these terms.

The term '*commencement*' is referenced to section 70 and section 81. For section 70, it is defined to mean the commencement of the section in which the term is used. For section 81, it is defined to mean the commencement of the provision in which the term is used.

The term '*conduct obligation*' for a member, means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the

conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '**conviction**' is defined to mean a conviction other than a spent conviction.

The term '**indictable offence**' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code, applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of the person's criminal history.

The terms '**new additional members**' and '**new appointed members**' are referenced to section 81 and have the meaning given in that section.

The term '**notice**' is defined to mean written notice.

The term '**pre-amended Act**' is referenced to section 70 and 81. For section 70, it is defined to mean the Act as in force before the commencement of the *Education (Miscellaneous Amendments) Act 2002*, part 7. For section 81, it is defined to mean the Act as in force before the commencement of the *University Legislation Amendment Act 2005*, part 3.

The term '**spent conviction**' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

## **Part 4 Amendment of James Cook University Act 1997**

Clause 49 provides that this part amends the *James Cook University Act 1997*.

Clause 50 amends section 11 (Delegation). The clause inserts a new section 11(3) to enable the council to delegate its power to approve the spending of funds available to the university by way of bequest, donation or special grant. Delegation of the council's power to approve expenditure available from these sources is limited to matters of not more than \$100 000.

Previously, the council has been unable to delegate the approval of any expenditure of funds available to the university by way of bequest, donation or special grant. This restriction has resulted in the delays for approval of minor expenditure from these sources of funding. The amendment will provide the council with the flexibility to delegate the

approval of expenditure of funds from these sources of not more than \$100 000, whilst ensuring that major expenditures, will continue to receive council's scrutiny and approval.

Clause 51 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of council) provides that the council consists of official, appointed, elected members and an additional member. Previously, it was optional for the council to include additional members. The new section will require the council to include an additional member which is necessary given that the new section 16 (Additional member) requires the council to appoint an additional member.

The clause also omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that the council has three official members, namely the chancellor, vice-chancellor and chairperson of the academic board. Previously there were 6 official members. The new section is necessary because Protocol 3 provides that apart from the chancellor, vice-chancellor and the presiding member of the academic board, all members of a university governing body must be elected or appointed.

Clause 52 amends section 14 (Appointed members) to reduce the number of appointed members. The clause amends section 14(1) to reduce the number of appointed members from 9 to 8.

Clause 53 amends section 15 (Elected members) to alter the composition of elected members.

The clause:

- omits references to 'full-time' from sections 15(2)(b) and 15(3)(b) to provide that there are 2 elected members elected by the general staff and that all general staff may vote in the ballot for elected members elected by the general staff.
- omits the existing sections 15(2)(c) and 15(2)(d) and inserts new sections 15(2)(c) to 15(2)(f). The new sections 15(2)(c) to 15(2)(f) provide that in addition to 3 academic staff and 2 general staff, that 1 undergraduate student, 1 postgraduate student, 1 undergraduate or postgraduate student and 2 members of the convocation, are also elected members. The 2 members of the convocation are to be other than persons eligible for membership under sections 15(2)(a) to 15(2)(e).
- omits the existing section 15(3)(c) and 15(3)(d) and inserts new sections 15(3)(c) and 15(3)(d). The new section 15(3)(c)



provides that all students may vote in the ballot for the elected members mentioned in new sections 15(2)(c), 15(2)(d) and 15(2)(e). The new section 15(3)(d) provides that all members of the convocation may vote in the ballot for the elected members elected by the convocation.

- amends section 15(4)(a) to omit the reference to ‘subsection (2)(c)’ and insert a reference to ‘subsection (2)(c), (2)(d) or (2)(e)’.
- amends section 15(4)(b) to omit the reference to ‘subsection (2)(d)’ and insert a reference to ‘subsection (2)(f)’.

Clause 54 omits the existing section 16 and inserts a new section 16. The new section 16 (Additional member) provides that the council must appoint 1 additional member. The new section 16 continues the requirement that an additional member must not be a student or a member of the university’s academic or general staff.

Previously, section 16 made it optional for the council to appoint additional members. The new section will require the council to appoint an additional member. This is considered necessary to ensure that the council will have the full complement of 22 members.

Clause 55 amends section 17 (When council is taken to be properly constituted) as a consequence of the amendments to sections 13, 14, 15 and 16 which have reduced the number of members on the council. The clause provides that the council is properly constituted when it has 12 or more members, whether they be additional, appointed, elected or official members.

Clause 56 amends section 18 (Appointed member’s term of office) to provide that an appointed member is to be appointed for a term, not more than 4 years. Previously, the Act provided that an appointed member was appointed for a term, not more than 3 years. The longer term of office will provide greater continuity in membership.

Clause 57 amends section 19 (Elected member’s term of office) to:

- omit section 19(1) which provides that an elected member holds office for 3 years and insert a new section 19(1). The new section 19(1) provides that the elected members elected by the academic staff, general staff and the convocation hold office for 4 years.

- insert a new section 19(1A) to provide that the elected members elected by students, hold office for 2 years.
- renumber section 19(1A) and the existing section 19(2), as sections 19(2) and 19(3).

The longer term of office for elected members elected by the academic and general staff and the convocation will provide greater continuity in membership.

The new section 19(1A) limits the term of office for the elected members mentioned in section 15(2)(c) to 15(2)(e) which are elected by students, to 2 years. A term of 2 years is considered more appropriate for the elected members elected by students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 58 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is to be appointed for a term of not more than 4 years, as decided by the council. Previously, the Act provided that an additional member was to be appointed for a term of not more than 3 years, as decided by the council. The longer term of office will provide greater continuity in membership.

Clause 59 amends section 20A (Dealing with casual vacancy in office of an elected member). The clause amends 20A(7) which contains the sectional definition of *'member of the convocation'*, to provide that elected members elected by the academic staff, general staff and students are not considered to be a member of the convocation for the purposes of section 20A.

Clause 60 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of council).

The new section 23(1)(a) provides that a person is not eligible to become an elected, appointed or additional member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 23(1)(b) provides that a person is not eligible to become an elected, appointed or additional member if the person has a conviction for an indictable offence, other than an offence which makes the person is ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an elected, appointed or additional member if they are disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*

(Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that a person was ineligible to become an elected, appointed or additional member if they had been found guilty of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term '**conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term '**spent conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as a member would result in the person being a member for 12 years or more, whether continuously or not. This new section is necessary to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction because an official member continues as a member for as long as they hold the position of chancellor, vice-chancellor or chairperson of the academic board.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be elected or appointed as an elected, appointed or additional member.

Section 23(4) provides that a person's ineligibility to become an elected, appointed or additional member under section 23(1)(b), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to become an appointed, elected or additional member if the person has a conviction for an indictable offence.

Clause 61 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h). The new sections 24(1)(f) and 24(1)(g) provide that the office of an elected, appointed or additional member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to continue an appointed, elected or additional member if the person has been convicted of an indictable offence.

Clause 62 inserts new part 2, division 3A (Members' function, and removing elected, appointed and additional members from office) and 3B (Extending terms of office) after section 26. This clause also inserts new sections 26A to 26C. Notes on these sections are as follows-

- The new section 26A (Member's function, and obligations about functions) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university; and
- exercise reasonable skill, care and diligence; and
- disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or

her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Council may remove member from office) enables the council to remove an elected, appointed or additional member from office.

Section 26B(1) provides that the council may remove an elected, appointed or additional member from office if at least 15 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the council decides to remove a member from office under section 26B(1), as soon as practicable the council must give the member a notice of the decision and the reasons for the decision. If the council has decided to remove an appointed member, the council must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the council gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the council's power to remove an appointed member from office under this section does not limit the Governor in Council's powers to remove, suspend, reinstate or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) of the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of elected, appointed and additional members.

Section 26C(1) provides that the Minister may extend the terms of office of elected, appointed and additional members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the

council to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the council having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the council.

Section 26C(2) requires that the Minister must extend the terms of office of all elected, appointed or additional members by the same amount. This ensures equity between all members of the council.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office for appointed, elected and additional members.

Clause 63 amends section 30 (Chancellor) to renumber the existing section 30(4) to become section 30(5). The clause then inserts a new section 30(4) to provide that a person elected as chancellor must not be a student or a member of the university's academic staff or general staff. The new section 30(4) will assist in ensuring that there is a majority of external persons on the council as required by Protocol 5.

Clause 64 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 4 years, as fixed by the council. Previously, the Act provided that the deputy chancellor held office for the term, not longer than 3 years as fixed by the council. This amendment will ensure parity with the terms of office for most members, which will now be 4 years instead of 3 years.

Clause 65 inserts a new section 40AA after section 40. The new section 40AA (Chairperson of the academic board) establishes that:

- there is a chairperson of the academic board;
- the council must decide who is the chairperson; and
- the chairperson holds office for the term, not longer than 2 years, as decided by the council.

Clause 66 inserts a new part 4A into the Act. The new part 4A (Matters relating to the offices of chancellor, deputy chancellor, vice-chancellor and chairperson) consists of new sections 40C to 40F. Notes on these sections are as follows –

- The new section 40C (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor, vice-chancellor or chairperson and the discretionary power of the council.

Section 40C(1)(a) provides that a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 40C(1)(b) provides that subject to sections 40C(2) and 40C(4), a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person has a conviction for an indictable offence, other than an offence in relation to which the person is disqualified from office under section 40C(1)(a).

This section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor, vice-chancellor and chairperson with the requirements for elected, appointed and additional members, in that a person cannot become or continue as an elected, appointed or additional member if they have a conviction or have been convicted of an indictable offence, other than an offence which disqualifies the person from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 40C(2) provides that the council may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in section 40C(1)(b):

- restore a person as chancellor, vice-chancellor or chairperson by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor, vice-chancellor or chairperson despite the conviction.

Section 40C(3) provides that on the day the person receives the notice they are restored as chancellor, vice-chancellor or chairperson and the term of office for the person who has been elected or appointed to fill the vacancy, ends.

Section 40C(4) provides that if a person is restored as the chancellor, vice-chancellor or chairperson, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 40D (Council may remove chancellor, vice-chancellor or chairperson) enables the council to remove the chancellor, vice-chancellor or chairperson from office.

Section 40D(1) provides that the council may remove the chancellor, vice-chancellor or chairperson from office if at least 15 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 40D(2) requires that if the council decides to remove the chancellor, vice-chancellor or chairperson from office under section 40D(1), the council must give the chancellor, vice-chancellor or chairperson notice of the decision and the reasons for it as soon as practicable.

Section 40D(3) clarifies that the chancellor's, vice-chancellor's or chairperson's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

- The new section 40E (Particular matters about removal of vice-chancellor) provides in section 40E(1) that the council may remove the vice-chancellor from office under section 40D despite the vice-chancellor's terms of appointment. Section 40E(2) provides that a decision by the council to remove the vice-chancellor from office under section 40D does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 40E(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the



appointment had been ended as permitted under the terms of appointment, or his or her term of office had ended.

- The new section 40F (Vacation of office) clarifies that the office of the chancellor, vice-chancellor or chairperson becomes vacant if a person cannot continue in the particular office under section 40C or the person has been removed from office under section 40D. Section 40F also clarifies the circumstances under which the office of the deputy chancellor becomes vacant.

Clause 67 amends section 57 (Making of university statutes) to insert new sections 57(2)(ea) and 57(2)(eb). The new sections 57(2)(ea) and 57(2)(eb) provide that the council may make a statute about the following matters:

- the process for removing a person from office under section 26B or 40D;
- the spending of funds under a delegation under new section 11(3).

The clause also renumbers sections 57(2)(aa) to 57(2)(i) to become sections 57(2)(b) to 57(2)(l) and corrects the reference in section 57(3) from section 57(2)(b) to section 57(2)(c).

Clause 68 amends section 61 (Forming and taking part in corporations). The clause amends section 61(1) to clarify that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 61(1)(a) to 61(1)(g).

Previously, the Act provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in sections 61(1)(a) to 61(1)(g). The amendment clarifies that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 61(1)(a) to 61(1)(g).

Clause 69 inserts new sections 62A (Protection from liability), 62B (Report about person's criminal history) and 62C (Delegation by Minister) after section 62. Notes on these sections are as follows-

- The new section 62A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 62A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.

- The new section 62B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member. This section is necessary to give the Minister the legislative authority to request criminal history information about persons the Minister is considering recommending to the Governor in Council for appointment as appointed members.

Section 62B(2) provides that the council may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor, vice-chancellor or chairperson, or an elected or additional member.

Section 62B(3) provides that the commissioner of police must comply with a request made under section 62B(1) or section 62B(2).

Section 62B(4) provides that the Minister or the council may only make a request under section 62B(1) or section 62B(2) about a person, if the person has given their written consent for the request.

Section 62B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 62B(1) or section 62B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 62B(6) requires that the Minister or the council must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 62B(7) defines the term '**criminal history**' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed or set aside convictions are not included as part of a person's criminal history.

- The new section 62C provides that the Minister may delegate the Minister's power under section 62B(1) to an appropriately qualified officer of the department.

Clause 70 inserts a new part 8, division 2 (Transitional provisions for the University Legislation Amendment Act 2005). The clause also inserts new sections 68 to 78. Notes on these sections are as follows-

### **Subdivision 1 Preliminary**

- The new section 68 (Definitions for division 2) provides the definitions for the division.

The term '*commencement*' means the commencement of the provision in which the term is used.

The term '*new additional member*' is referenced to section 74 and means the person appointed by the council as an additional member with 1 year after the commencement of this Act.

The term '*new appointed members*' is referenced to section 70(2) and means those persons appointed by the Governor in Council as appointed members within 1 year after the commencement of this Act.

The term '*pre-amended Act*' is defined to mean the Act as in force before the commencement of the *University Legislation Amendment Act 2005*, part 4.

### **Subdivision 2 Provisions about council membership**

- The new section 69 (Continuation of official members) provides that despite the new section 13 (Official members), the chief executive or the chief executive's nominee, the president of the staff association and the president of the union continue as official members until the new appointed members' terms of office start.

This ensures that the chief executive or the chief executive's nominee, the president of the staff association and the president of the union will continue as official members after the

commencement of this Act, until the new appointed members' terms of office start.

- The new section 70 (Appointment of new appointed members) provides that within 1 year after the commencement of this Act, the Minister must recommend to the Governor in Council, 8 persons for appointment under section 14(2) as appointed members.
- The new section 71 (Continuation, and term of office, of appointed members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite section 14(1), the person continues as an appointed member; and
  - despite section 18, the person's term of office ends when the new appointed members' terms of office start, unless it sooner becomes vacant.

This section ensures that the 9 appointed members appointed under the pre-amended Act continue as appointed members after the commencement of this Act. The section also provides that the terms of office for these 9 appointed members end when the new appointed members' terms of office start.

- The new section 72 (Continuation of elected members) applies to a person who was an elected member immediately before the commencement of this Act. The section provides that:
  - despite sections 15(1) and 15(2), the person continues as an elected member until the person's term of office ends under section 73 or sooner becomes vacant; and
  - despite sections 19(1) and 19(2), the person's term of office is 3 years.

This section ensures that the 10 elected members elected under the pre-amended Act continue as elected members after the commencement of this Act. The section also provides that the terms of office for these 10 elected members end under section 73.

- The new section 73 (Ballot, and term of office, for elected members) provides that:

- at least 14 days before the new appointed members are appointed, a ballot under section 15(3) of the post-amended Act must be conducted for elected members;
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(a) of the pre-amended Act, ends when the person who is the member's successor is elected under the ballot, despite section 72(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(b) of the pre-amended Act, ends when the elected members mentioned in section 15(2)(b) of the post-amended Act are elected under the ballot, despite section 72(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(c) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(c) of the post-amended Act is elected under the ballot, despite section 72(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(d) of the pre-amended Act, ends when the elected members mentioned in section 15(2)(f) of the post-amended Act are elected under the ballot, despite section 72(3);
  - a person is taken to be elected under the ballot when the new appointed members' terms of office start;
  - despite section 19(3), the term of office of a person elected under the ballot starts when the new appointed members' terms of office start;
  - the term '*post-amended Act*' is defined for this section to mean the Act as in force after the commencement of the *University Legislation Amendment Act 2005*, part 4.
- The new section 74 (Appointment of new additional member) provides that within 1 year after the commencement of this Act, the council must appoint a person as an additional member.

- The new section 75 (Continuation, and term of office, of additional members) applies to a person who was an additional member immediately before the commencement of this Act. The section provides that:
  - the person continues as an additional member; and
  - despite section 20, the person's term of office ends when the new additional members' terms of office start, unless it sooner becomes vacant.

This section ensures that if the university had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional member's term of office starts.

- The new section 76 (Council need not include additional members) provides that despite section 12 (Membership of council), the council does not have to include an additional member before the new additional member's term of office starts. This section arises as a consequence of section 74, which provides that the council must appoint 1 person as an additional member within 1 year after the commencement of this Act. Until the new additional member's term of office starts, the council will not be required to include an additional member.
- The new section 77 (Dealing with casual vacancy in office of elected member) provides that where a casual vacancy arises in the office of an elected member after the commencement of this Act but before the ballot is conducted in section 73(1), the vacancy is to be filled as if part 4 of this Act had not commenced.

### **Subdivision 3 Constitution of council**

- The new section 78 (Constitution of council) provides that despite section 17 (When council is taken to be properly constituted), and until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 15 or more members. This section ensures that until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 15 or more members.

Clause 71 amends Schedule 2 (Dictionary) to replace the definition for '**indictable offence**' and insert definitions for new terms.

The term '**chairperson**' is defined to mean the chairperson of the academic board.

The terms '**commencement**', '**new additional member**', '**new appointed members**' and '**pre-amended Act**' are referenced to section 68 and have the meaning given in that section.

The term '**conduct obligation**' for a member means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '**conviction**' is defined to mean a conviction other than a spent conviction.

The term '**indictable offence**' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code, applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of the person's criminal history.

The term '**notice**' is defined to mean written notice.

The term '**spent conviction**' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

## **Part 5 Amendment of Queensland University of Technology Act 1998**

Clause 72 provides that this part amends the *Queensland University of Technology Act 1998*.

Clause 73 amends section 11 (Delegation) to insert a new section 11(3). The new section 11(3) provides that the council may delegate its power to approve the spending of funds available to the university by bequest, donation or special grant if the expenditure is for a scholarship or prize funded by bequest, donation or special grant.

Clause 74 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of council) provides that the council consists of official, appointed, elected and additional members. Previously, it was optional for the council to include additional members. The new section will require the council to include additional members which is necessary given that the new section 16 (Additional members) requires the council to appoint additional members.

Clause 75 omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that the official members are:

- the chancellor;
- the vice-chancellor; and
- if the chairperson of the academic committee is not the chancellor or vice-chancellor, or an elected, appointed or additional member – the chairperson.

Clause 76 amends section 15 (Elected members). The clause amends sections 15(2)(b) and 15(3)(b) to omit references to ‘general staff’ and replace with ‘professional staff’.

Clause 77 omits the existing section 16 and inserts a new section 16. The new section 16 (Additional members) provides that the council must appoint 2 additional members. The new section 16 continues the requirement that an additional member must not be a student or a member of the university’s academic or professional staff.

Previously, section 16 made it optional for the council to appoint additional members. The new section will require the council to appoint additional members. This is considered necessary to ensure that the council will have the full complement of members.

Clause 78 amends section 18 (Appointed member’s term of office) to provide that an appointed member is to be appointed for a term, not more than 4 years. Previously, the Act provided that an appointed member was appointed for a term, not more than 3 years. The longer term of office will provide greater continuity in membership.

Clause 79 amends section 19 (Elected member’s term of office) to:

- omit the existing section 19(1) which provides that an elected member holds office for 3 years and insert a new section 19(1). The new section 19(1) provides that the elected members elected by the full-time and part-time academic staff or the full-time and



part-time professional staff or the QUT Alumni hold office for 4 years.

- insert a new section 19(1A) to provide that the elected members elected by students hold office for 2 years.
- renumber section 19(1A) and the existing section 19(2), as sections 19(2) and 19(3).

The longer term of office for elected members elected by the academic staff, professional staff and the QUT Alumni will provide greater continuity in membership.

The new section 19(1A) limits the terms of office for elected members elected by students to 2 years. A term of 2 years is considered more appropriate for the elected members elected by students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 80 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is to be appointed for a term of not more than 4 years, as decided by the council. Previously, the Act provided that an additional member was appointed for a term of not more than 3 years, as decided by the council. The longer term of office will provide greater continuity in membership.

Clause 81 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of council).

The new section 23(1)(a) provides that a person is not eligible to become an elected, appointed or additional member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 23(1)(b) provides that a person is not eligible to become an elected, appointed or additional member if the person has a conviction for an indictable offence, other than an offence which makes the person ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an elected, appointed or additional member if they are disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that a person was ineligible to become an elected, appointed or additional member if they had been found guilty of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term '**conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term '**spent conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as a member would result in the person being a member for 12 years or more, whether continuously or not. This new section is necessary to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction as an official member continues as a member for as long as they hold the position of chancellor, vice-chancellor or chairperson of the academic committee.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be elected or appointed as an elected, appointed or additional member.

Section 23(4) provides that a person's ineligibility to become an elected, appointed or additional member under section 23(1)(b), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to become an appointed, elected or additional member if the person has a conviction.

Clause 82 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h). The new sections 24(1)(f) and 24(1)(g) provide that the office of an elected, appointed or additional member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to continue as an appointed, elected or additional member if the person is convicted of an indictable offence.

Clause 83 inserts new part 2, divisions 3A (Members' function and removing elected, appointed and additional members from office) and 3B (Extending terms of office). This clause also inserts new sections 26A to 26C. Notes on these sections are as follows –

- The new section 26A (Member's function, and obligations about function) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university; and
- exercise reasonable skill, care and diligence; and
- disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Council may remove member from office) enables the council to remove an elected, appointed or additional member from office.

Section 26B(1) provides that the council may remove an elected, appointed or additional member from office if at least 15 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the council decides to remove a member from office under section 26B(1), as soon as practicable the council must give the member a notice of the decision and the reasons for the decision. If the council has decided to remove an appointed member, the council must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the council gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the council's power to remove an appointed member from office under this section does not limit the Governor in Council's power to remove, suspend, reinstate or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) of the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of elected, appointed and additional members.

Section 26C(1) provides that the Minister may extend the terms of office of elected, appointed and additional members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the council to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the council having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the council.

Section 26C(2) requires that the Minister must extend the terms of office of all elected, appointed or additional members by the same amount. This ensures equity between all members.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office of appointed, elected and additional members.

Clause 84 amends section 30 (Chancellor) to renumber the existing section 30(4) to become section 30(5). The clause then inserts a new section 30(4) to provide that a person elected as chancellor must not be a student or a member of the university's academic staff or professional staff. The new section 30(4) will assist in ensuring that there is majority of external persons on the council as required by Protocol 5.

Clause 85 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 2 years as fixed by the council. Previously the Act provided that the deputy chancellor held office for the term, not longer than 1 year as fixed by the council.

Clause 86 inserts a new part 4A into the Act. The new part 4A (Matters relating to the offices of chancellor, deputy chancellor, vice-chancellor and chairperson) consists of new sections 39B to 39E. Notes on these sections are as follows –

- The new section 39B (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor, vice-chancellor or chairperson and the discretionary power of the council.

Section 39B(1)(a) provides that a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 39B(1)(b) provides that subject to sections 39B(2) and 39B(3) a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person has a conviction for an indictable offence, other than an offence in relation to which the person is disqualified from office under section 39B(1)(a).

This section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor, vice-chancellor and chairperson with the requirements for elected, appointed and additional members, in that a person cannot become or continue as an elected, appointed or additional member if they have a conviction or have been convicted of an indictable offence, other than an offence which disqualifies the person from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 39B(2) provides that the council may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in subsection 39B(1)(b):

- restore a person as chancellor, vice-chancellor or chairperson by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor, vice-chancellor or chairperson despite the conviction.

Section 39B(3) provides that on the day the person receives the notice they are restored as chancellor, vice-chancellor or chairperson and the term of office for the person who has been elected or appointed to fill the vacancy ends.

Section 39B(4) provides that if a person is restored as the chancellor, vice-chancellor or chairperson, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 39C (Council may remove chancellor, vice-chancellor or chairperson from office) enables the council to remove the chancellor, vice-chancellor or chairperson from office.

Section 39C(1) provides that the council may remove the chancellor, vice-chancellor or chairperson from office if at least 15 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university

governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 39C(2) requires that if the council decides to remove the chancellor, vice-chancellor or chairperson from office under section 39C(1), the council must give the chancellor, vice-chancellor or chairperson, notice of the decision and the reasons for it as soon as practicable.

Section 39C(3) clarifies that the chancellor's, vice-chancellor's or chairperson's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

- The new section 39D (Particular matters about removal of vice-chancellor) provides in section 39D(1) that the council may remove the vice-chancellor from office under section 39C despite the vice-chancellor's terms of appointment. Section 39D(2) provides that a decision by the council to remove the vice-chancellor from office under section 39C does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 39D(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the appointment had been ended as permitted under the terms of appointment, or his or her term of office had ended.
- Section 39E (Vacation of office) clarifies that the office of the chancellor, vice-chancellor or chairperson becomes vacant if a person cannot continue in the particular office under section 39B or the person has been removed from office under section 39C. Section 39E also clarifies the circumstances under which the office of deputy chancellor becomes vacant.

Clause 87 amends section 56 (Making of university statutes) to renumber existing sections 56(2)(g) to 56(2)(j) to become sections 56(2)(i) to 56(2)(l). The clause also inserts a new sections 56(2)(g) and 56(2)(h) to provide that the council may make a statute about the following matters:

- the process for removing a person from office under section 26B or 39C;
- the spending of funds under a delegation under new section 11(3).

Clause 88 amends section 60 (Forming and taking part in corporations). The clause amends section 60(1) to clarify that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 60(1)(a) to 60(1)(g).

Previously, the Act provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in sections 60(1)(a) to 60(1)(g). The amendment clarifies that a university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 60(1)(a) to 60(1)(g).

Clause 89 inserts a new sections 61A (Protection from liability), 61B (Report about person's criminal history) and 61C (Delegation by Minister) after section 61. Notes on these sections are as follows-

- The new section 61A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 61A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.
- The new section 61B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member. This section is necessary to give the Minister the legislative authority to request criminal history information about persons the Minister is considering recommending to the Governor in Council for appointment as appointed members.

Section 61B(2) provides that the council may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor, vice-chancellor or chairperson, or an elected or additional member.

Section 61B(3) provides that the commissioner of police must comply with a request made under section 61B(1) or section 61B(2).



Section 61B(4) provides that the Minister or the council may only make a request under section 61B(1) or section 61B(2) about a person, if the person has given their written consent for the request.

Section 61B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 61B(1) or section 61B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 61B(6) requires that the Minister or the council must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 61B(7) defines the term '*criminal history*' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed or set aside convictions are not included as part of a person's criminal history.

- The new section 61C provides that the Minister may delegate the Minister's power under section 61B(1) to an appropriately qualified officer of the department.

Clause 90 inserts a new part 8 into the Act. The new part 8 (Transitional provisions for the University Legislation Amendment Act 2005) consists of new sections 65 to 72. Notes on these sections are as follows –

## **Division 1            Preliminary**

- The new section 65 (Definitions for pt 8) provides the definitions for part 8.

The term '*commencement*' means the commencement of the provision in which the term is used.

The term '*new additional members*' is referenced to section 68 and means those persons appointed by the council as additional members within 1 year after the commencement of this Act.

The term ***‘pre-amended Act’*** means the Act in force before the commencement of the *University Legislation Amendment Act 2005*, part 5.

## **Division 2            Provisions about council membership**

- The new section 66 (Appointed members) applies to a person who was an appointed member immediately before the commencement of this Act.

Section 66(2) provides that the person is taken to have been appointed for a term of 4 years, unless the person was appointed to fill a casual vacancy in the office of an appointed member.

Section 66(3) provides that if a person was appointed to fill a casual vacancy in the office of an appointed member, the term of office of the person’s predecessor is taken to be 4 years.

Section 66(4) provides that sections 66(2) and 66(3) apply despite section 18 of the pre-amended Act.

- The new section 67 (Elected members) provides that a person who was an elected member mentioned in section 15(2)(b) of the pre-amended Act immediately before commencement of this Act, is taken to be the elected member elected by the full-time and part-time professional staff under the new section 15(2)(b) as in force after the commencement of this Act.
- The new section 68 (Appointment of new additional members) provides that within 1 year after the commencement of this Act, the council must appoint 2 persons as additional members under section 16.
- The new section 69 (Continuation, and term of office, of additional members) applies to a person who was an additional member immediately before the commencement of this Act. The section provides that:
  - the person continues as an additional member; and
  - despite section 20, the person’s term of office ends when the new additional members’ terms of office start, unless it sooner becomes vacant.

This section ensures that if the university had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional members' terms of office start.

- The new section 70 (Council need not include additional members) provides that despite section 12 (Membership of council), the council does not have to include additional members before the new additional members' terms of office start. This section arises as a consequence of section 68 which provides that the council must appoint 2 additional members within 1 year after the commencement of this Act. Until the new additional members' terms of office start, the council will not be required to include additional members.

Clause 91 amends Schedule 2 (Dictionary) to:

- replace the definition for '*indictable offence*';
- insert definitions for new terms; and
- amend the existing definition for '*general staff*'.

The term '*academic committee*' is defined to mean the committee of the council that is responsible for advising the council about the academic policies and activities of the university.

The term '*chairperson*' means the chairperson of the academic committee.

The terms '*commencement*', '*new additional members*' and '*pre-amended Act*' are referenced to section 65 and have the meaning given in that section.

The term '*conduct obligation*' for a member, means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '*conviction*' is defined to mean a conviction other than a spent conviction.

The term '*indictable offence*' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code

applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of the person's criminal history.

The term '*notice*' is defined to mean written notice.

The term '*spent conviction*' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

The clause amends the definition of '*general staff*' to omit the word 'general' and replace with 'professional'.

## **Part 6 Amendment of University of Queensland Act 1998**

Clause 92 provides that this part amends the *University of Queensland Act 1998*.

Clause 93 amends section 11 (Delegation) to insert a new section 11(3). The new section 11(3) provides that the senate may delegate its power to approve the spending of funds available to the university by way of bequest, donation or special grant. The senate's power of delegation is limited to expenditure for a scholarship or prize funded by bequest, donation or special grant.

Previously, the senate has been unable to delegate the approval of any expenditure of funds available to the university by way of bequest, donation or special grant. This restriction has resulted in delays for approval of minor expenditure from these sources of funding. The amendment will provide the senate with the flexibility to delegate the approval of expenditure, if the expenditure is for a scholarship or prize funded by bequest, donation or special grant.

Clause 94 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of senate) provides that the senate consists of official, appointed, elected and additional members. Previously, it was optional for the senate to include additional members. The new section 12 will require the senate to include additional members which is necessary given that the new section 16 (Additional members) requires the senate to appoint additional members.

The clause also omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that the senate has 3

official members – the chancellor, vice-chancellor and president of the academic board. Previously there were 7 official members. The new section 13 is necessary because Protocol 3 provides that apart from the chancellor, vice-chancellor and the presiding member of the academic board, all members of a university governing body must be elected or appointed.

Clause 95 amends section 14 (Appointed members). The clause amends section 14(1) to:

- reduce the number of appointed members from 8 to 5; and
- omit the requirement that at least 2 appointed members are to be members of the Legislative Assembly.

It is necessary to remove the requirement that at least 2 appointed members are to be members of the Legislative Assembly because Protocol 5 provides that there must not be current members of any State or Commonwealth Parliament or Legislative Assembly on a university governing body, except where the person is selected by the university governing body.

Clause 96 amends section 15 (Elected members) to alter the composition of elected members.

The clause:

- amends section 15(1) to reduce the total number of elected members from 15 to 8.
- omits the existing sections 15(2)(b) to 15(2)(e) and inserts new sections 15(2)(b) to 15(2)(f). The new sections provide that there is 1 member of the university's full-time or part-time academic staff; 1 member of the university's full-time or part-time general staff; 1 undergraduate student; 1 postgraduate student and 3 graduates of the university (other than persons eligible for membership under sections 15(2)(a) to 15(2)(e)).
- omits the existing section 15(3)(b) and inserts a new section 15(3)(b). The new section 15(3)(b) provides that for an elected member mentioned in section 15(2)(b), all the members of the full-time academic staff, and those members of the part-time academic staff eligible under a university statute, may vote. The section also provides that if a statute about the eligibility of part-time academic staff to vote is not in force, all the members of the full-time and part-time academic staff may vote. It is not intended that casual staff be able to stand, or vote in elections to the senate.

- omits the existing section 15(3)(c) and inserts a new section 15(3)(c). The new section 15(3)(c) provides that for an elected member mentioned in section 15(2)(c), all the members of the full-time general staff, and those members of the part-time general staff eligible under a university statute, may vote. The section also provides that if a statute about the eligibility of part-time general staff to vote is not in force, all the members of the full-time and part-time general staff may vote. It is not intended that casual staff be able to stand, or vote in elections to the senate.
- amends section 15(3)(d) to provide that undergraduate students may vote in the ballot for the undergraduate student member mentioned in the new section 15(2)(d).
- omits the existing section 15(3)(e) and inserts a new section 15(3)(e). The new section 15(3)(e) provides that all postgraduate students may vote in the ballot for the postgraduate student member mentioned in the new section 15(2)(e).
- inserts a new section 15(3)(f) to provide that all graduates of the university eligible under a university statute may vote for the graduate members in the new section 15(2)(f).
- inserts definitions for the terms '*postgraduate student*' and '*undergraduate student*' for the purposes of section 15. The term '*postgraduate student*' is defined to mean a student enrolled in a course or program leading to the award of a postgraduate certificate or diploma, or a master's or doctoral degree, of the university. The term '*undergraduate student*' is defined to mean a student who is not a postgraduate student.

Clause 97 omits the existing section 16 and inserts a new section 16. The new section 16 (Additional members) provides that the senate must appoint 3 additional members. The new section 16 continues the requirement that an additional member must not be a student or a member of the university's academic or general staff.

Previously, section 16 made it optional for the senate to appoint additional members. The new section 16 will require the senate to appoint additional members. This is considered necessary to ensure that the senate will have the full complement of 22 members.

Clause 98 amends section 17 (When senate is taken to be properly constituted) as a consequence of the amendments to sections 13, 14, 15 and 16 which have reduced the number of members on the senate. The clause

provides that the senate is properly constituted when it has 13 or more members, whether they be additional, appointed, elected or official members.

Clause 99 amends section 18 (Appointed member's term of office) to provide that an appointed member is to be appointed for a term, not more than 4 years. Previously, the Act provided that an appointed member was appointed for a term, not more than 3 years. The longer term of office will provide greater continuity in membership.

Clause 100 amends section 19 (Elected member's term of office) to:

- omit the existing section 19(1) and insert a new section 19(1). The new section 19(1) provides that an elected member mentioned in sections 15(2)(a), 15(2)(b), 15(2)(c) and 15(2)(f) holds office for 4 years.
- insert a new section 19(1A) to provide that an elected member mentioned in sections 15(2)(d) and 15(2)(e) holds office for 2 years.
- renumber section 19(1A) and the existing section 19(2), as sections 19(2) and 19(3).

The longer term of office for elected members mentioned in sections 15(2)(a), 15(2)(b), 15(2)(c) or 15(2)(f) will provide greater continuity in membership.

The new section 19(1A) limits the term of office for the elected members elected by the undergraduate and postgraduate students to 2 years. A term of 2 years is considered more appropriate for the elected member elected by undergraduate and postgraduate students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 101 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is appointed for a term of not more than 4 years, as decided by the senate. Previously, the Act provided that an additional member was appointed for a term of not more than 3 years, as decided by the senate. The longer term of office will provide greater continuity in membership.

Clause 102 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of senate).

The new section 23(1)(a) provides that a person is not eligible to become an elected, appointed or additional member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 23(1)(b) provides that a person is not eligible to become an elected, appointed or additional member if the person has a conviction for an indictable offence, other than an offence which makes the person ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an elected, appointed or additional member if they are disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that a person was ineligible to become an elected, appointed or additional member if they had been found guilty of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term '**conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term '**spent conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as a member would result in the person being a member for 12 years or more, whether continuously or not. This new section is necessary to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction because an official member continues as a member for as long as they hold the position of chancellor, vice-chancellor or president of the academic board.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be elected or appointed as an elected, appointed or additional member.



Section 23(4) provides that a person's ineligibility to become an elected, appointed or additional member under section 23(1)(b), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the senate have respectively in sections 25 and 26, to allow a person to become an appointed, elected or additional member if the person has a conviction for an indictable offence.

Clause 103 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h). The new sections 24(1)(f) and 24(1)(g) provide that the office of an elected, appointed or additional member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the senate have respectively in sections 25 and 26, to allow a person to continue as an appointed, elected or additional member if the person has been convicted of an indictable offence.

Clause 104 inserts new part 2, division 3A (Members' function and removing elected, appointed and additional members from office) and 3B (Extending terms of office) after section 26. This clause also inserts new sections 26A to 26C. Notes on these sections are as follows -

- Section 26A (Member's function, and obligations about function) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the senate performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university; and
- exercise reasonable skill, care and diligence; and
- disclose to the senate any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Senate may remove member from office) enables the senate to remove an elected, appointed or additional member from office.

Section 26B(1) provides that the senate may remove an elected, appointed or additional member from office if at least 15 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the senate decides to remove a member from office under section 26B(1), as soon as practicable the senate must give the member a notice of the decision and the reasons for the decision. If the senate has decided to remove an appointed member, the senate must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the senate gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the senate's power to remove an appointed member from office under this section does not limit the Governor in Council's powers to remove, suspend, reinstate

or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) under the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of elected, appointed and additional members.

Section 26C(1) provides that the Minister may extend the terms of office of elected, appointed and additional members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the senate to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the senate having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the senate.

Section 26C(2) requires that the Minister must extend the terms of office of all elected, appointed or additional members by the same amount. This ensures equity between all members.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office for appointed, elected and additional members.

Clause 105 omits the existing section 30 and inserts a new section 30. The new section 30 (Chancellor) provides that there is a chancellor of the university; that the senate must elect a chancellor whenever there is a vacancy in the office; that the person elected need not be a member; and must not be a student or a member of the university's academic or general staff. The new section 30 also provides that the chancellor holds office for the term, not longer than 5 years, as fixed by the senate.

Clause 106 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 4 years, as fixed by the senate. Previously, the Act provided that the deputy chancellor held office for the term, not longer than 3 years as fixed by the senate. This amendment will ensure parity with the

terms of office for most members, which will now be 4 years instead of 3 years.

Clause 107 omits part 4, division 1 (Convocation).

Clause 108 inserts a new section 35AA after section 35. The new section 35AA (President of the academic board) establishes that:

- there is a president of the academic board;
- the senate must decide who is the president; and
- the president holds office for the term, not longer than 1 year, as decided by the senate.

Clause 109 amends section 35A (Excluded matters for Corporations legislation) to omit section 35A(a) and renumbers sections 35A(b) and 35A(c) to become sections 35A(a) and 35A(b).

Clause 110 inserts a new part 4A into the Act. The new part 4A (Matters relating to the offices of chancellor, deputy chancellor, vice-chancellor and president) consists of new sections 35C to 35F. Notes on these sections are as follows –

- The new section 35C (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor, vice-chancellor or president and the discretionary power of the senate.

Section 35C(1)(a) provides that a person cannot become or continue as chancellor, vice-chancellor or president if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 35C(1)(b) provides that subject to sections 35C(2) and 35C(4), a person cannot become or continue as chancellor, vice-chancellor or president if the person has a conviction for an indictable offence, other than an offence which disqualifies the person from office under section 35C(1)(a).

This new section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor, vice-chancellor and the president with the requirements for elected, appointed and additional members, in that a person cannot become or continue as an elected, appointed or additional member if they have a conviction or have been convicted of an indictable offence, other

than an offence which disqualifies the person from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 35C(2) provides that the senate may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in section 35C(1)(b):

- restore a person as chancellor, vice-chancellor or president by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor, vice-chancellor or president despite the conviction.

Section 35C(3) provides that on the day the person receives the notice they are restored as chancellor, vice-chancellor or president and the term of office for the person who has been elected or appointed to fill the vacancy ends.

Section 35C(4) provides that if a person is restored as the chancellor, vice-chancellor or president, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 35D (Senate may remove chancellor, vice-chancellor or president from office) enables the senate to remove the chancellor, vice-chancellor or president from office.

Section 35D(1) provides that the senate may remove the chancellor, vice-chancellor or president from office if at least 15 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 35D(2) requires that if the senate decides to remove the chancellor, vice-chancellor or president from office under section 35D(1), the senate must give the chancellor, vice-chancellor or president notice of the decision and the reasons for it as soon as practicable.

Section 35D(3) clarifies that the chancellor's, vice-chancellor's or president's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

- The new section 35E (Particular matters about removal of vice-chancellor) provides in section 35E(1) that the senate may remove the vice-chancellor from office under section 35D despite the vice-chancellor's terms of appointment. Section 35E(2) provides that a decision by the senate to remove the vice-chancellor from office under section 35D does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 35E(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the appointment had been ended as permitted under the terms of appointment or his or her term of office had ended.
- A new section 35F (Vacation of office) clarifies that the office of the chancellor, vice-chancellor or president becomes vacant if a person cannot continue in the particular office under section 35C or the person has been removed from office under section 35D. Section 35F also clarifies the circumstances under which the office of the deputy chancellor becomes vacant.

Clause 111 amends section 52 (Making of university statutes). The clause:

- omits section 52(2)(e) which relates to the membership of the convocation;
- amends section 52(2)(f) to provide that the senate may make a statute about the conduct of a ballot for the election of elected members, including the voting rights of graduates, part-time academic staff and part-time general staff of the university;
- inserts new sections 52(2)(fa) and 52(2)(fb) to provide that the senate may make a statute about the process for removing a person from office under new sections 26B or 35D or about the spending of funds under a delegation under new section 11(3); and
- renumbers section 52(2)(f) to 52(2)(k) to become sections 52(2)(e) to 52(2)(l).

Clause 112 amends section 55 (Forming and taking part in corporations). The clause amends section 55(1) to clarify that the university may be a member of, form, take part in forming or manage a corporation as long as the objects of the corporation include any of the objects set out in sections 55(1)(a) to 55(1)(g).

Previously, section 55(1) provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in sections 55(1)(a) to 55(1)(g). The amendment clarifies that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 55(1)(a) to 55(1)(g).

Clause 113 inserts new sections 56A (Protection from liability), 56B (Report about a person's criminal history) and 56C (Delegation by Minister) after section 56. Notes on these sections are as follows –

- The new section 56A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 56A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.
- The new section 56B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member. This section is necessary to give the Minister the legislative authority to request criminal history information about persons the Minister is considering recommending to the Governor in Council for appointment as appointed members.

Section 56B(2) provides that the senate may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor, vice-chancellor or president, or an elected or additional member.

Section 56B(3) provides that the commissioner of police must comply with a request made under section 56B(1) or section 56B(2).

Section 56B(4) provides that the Minister or the senate may only make a request under section 56B(1) or section 56B(2) about a person, if the person has given their written consent for the request.

Section 56B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 56B(1) or section 56B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 56B(6) requires that the Minister or the senate must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 56B(7) defines the term '*criminal history*' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed or set aside convictions are not included as part of a person's criminal history.

- Section 56C provides that the Minister may delegate the Minister's power under section 56B(1) to an appropriately qualified officer of the department.

Clause 114 inserts a new part 8, division 2 (Transitional provisions for the University Legislation Amendment Act 2005). The new division 2 consists of new sections 61 to 71. Notes on these sections are as follows –

## **Subdivision 1 Preliminary**

- The new section 61 (Definitions for div 2) provides the definitions for the division.

The term '*commencement*' means the commencement of the provision in which the term is used.

The term '*new additional members*' is referenced to section 67 and means those persons appointed by the senate as additional members within 1 year after the commencement of this Act.



The term '*new appointed members*' is referenced to section 63(2) and means those persons appointed by the Governor in Council within 1 year after the commencement of this Act.

The term '*pre-amended Act*' is defined to mean the Act as in force before the commencement of the *University Legislation Amendment Act 2005*, part 6.

## **Subdivision 2 Provisions about membership of senate**

- The new section 62 (Continuation of official members) provides that despite the new section 13 (Official members), a person who was an official member under sections 13(2)(b), 13(2)(d), 13(2)(e), 13(2)(f) and 13(2)(g) of the pre-amended Act, continue as official members until the new appointed members' terms of office start.
- The new section 63 (Appointment of new appointed members) provides that the Minister must recommend to the Governor in Council, 8 persons for appointment under section 14(2) as appointed member, within 1 year after the commencement of this Act.
- The new section 64 (Continuation of appointed members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite sections 14(1) and 60(2), the person continues as an appointed member; and
  - the person's term of office ends when the new appointed members' terms of office start, unless it sooner becomes vacant.

This section ensures that the 11 appointed members appointed under the pre-amended Act continue as appointed members after the commencement of this Act. The section also provides that the terms of office for these 11 appointed members end when the new appointed members' terms of office start.

- The new section 65 (Continuation of elected members) applies to a person who was an elected member immediately before the commencement of this Act. The section provides that despite

sections 15(1) and 15(2), the person continues as an elected member until the person's term of office ends under section 66 or sooner becomes vacant.

This section ensures that the 15 elected members elected under the pre-amended Act continue as elected members after the commencement of this Act. The section also provides that the terms of office for these 15 elected members end under section 66.

- The new section 66 (Ballot, and term of office, for elected members) provides that:
  - at least 14 days before the new appointed members are appointed, a ballot under section 15(3) of the post-amended Act must be conducted for elected members;
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(a) of the pre-amended Act, ends when the elected member who is the member's successor is elected under the ballot, despite sections 19(1), 19(2) and 60(2);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(b) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(b) of the post-amended Act is elected under the ballot, despite sections 19(1), 19(2) and 60(2);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(c) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(c) of the post-amended Act is elected under the ballot, despite sections 19(1), 19(2) and 60(2);
  - the term of office for a person who immediately before the ballot is conducted is an elected member mentioned in section 15(2)(d) of the pre-amended Act ends when the elected member mentioned in section 15(2)(d) of the post-amended Act is elected under the ballot, despite sections 19(1), 19(2) and 60(2);

- the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(e) of the pre-amended Act, ends when the elected members mentioned in section 15(2)(f) of the post-amended Act are elected under the ballot, despite sections 19(1), 19(2) and 60(2);
  - a person is taken to be elected under the ballot when the new appointed members' terms of office start;
  - despite section 19(3), the term of office of a person elected under the ballot starts when the new appointed members' terms of office start.
  - the term '*post-amended Act*' is defined for this section to mean the Act as in force after the commencement of the *University Legislation Amendment Act 2005*, part 6.
- The new section 67 (Appointment of new additional members) provides that within 1 year after the commencement of this Act, the senate must appoint 3 persons as additional members under section 16.
  - The new section 68 (Continuation of additional members) applies to a person who was an additional member immediately before the commencement of this Act. This section provides that:
    - despite section 60(2), the person continues as an additional member; and
    - the person's term of office ends when the new additional members' terms of office start or it sooner becomes vacant.

This section ensures that if the senate had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional members' terms of office start.

- The new section 69 (Senate need not include additional members) provides that despite the new section 12 (Membership of senate), the senate does not have to include additional

members before the new additional members' terms of office start.

This section arises as a consequence of section 67, which provides that the senate must appoint 3 additional members within 1 year after the commencement of this Act. Until the new additional members' terms of office start, the senate will not be required to include additional members.

- The new section 70 (Dealing with casual vacancy in office of elected member) provides that where a casual vacancy arises in the office of an elected member after the commencement of this Act but before the ballot is conducted in section 66(1), the vacancy is to be filled as if part 6 of this Act had not commenced.

### **Subdivision 3 Constitution of senate**

- The new section 71 (Constitution of senate) provides that until the new appointed members' terms of office start and despite section 17, the senate is taken to be properly constituted when it has 20 or more members.

Clause 115 amends Schedule 2 (Dictionary) to:

- omit the definitions for '*graduate staff*' and '*convocation*';
- replace the definition of '*indictable offence*'; and
- insert definitions for new terms.

The terms '*commencement*', '*new additional members*', '*new appointed members*' and '*pre-amended Act*' are referenced to the new section 61 and have the meaning given in that section.

The term '*conduct obligation*' for a member, means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '*conviction*' is defined to mean a conviction other than a spent conviction.

The term '*graduate*' of the university is defined to mean a person awarded a degree, diploma or certificate of the university or the former Queensland Agricultural College.

The term '*indictable offence*' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of the person's criminal history.

The term '*notice*' is defined to mean written notice.

The term '*president*' is defined to mean the president of the academic board.

The term '*spent conviction*' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

## **Part 7 Amendment of University of Southern Queensland Act 1998**

Clause 116 provides that this part amends the *University of Southern Queensland Act 1998*.

Clause 117 amends section 11 (Delegation). The clause inserts a new section 11(3) to enable the council to delegate its power to approve the spending of funds available to the university by way of bequest, donation or special grant. Delegation of the council's power to approve expenditure available from these sources is limited to matters not more than \$100 000.

Previously, the council has been unable to delegate the approval of any expenditure of funds available to the university by way of bequest, donation or special grant. This restriction has resulted in delays for approval of minor expenditure from these sources of funding. The amendment will provide the council with the flexibility to delegate the approval of expenditure of funds from these sources of not more than \$100 000, whilst ensuring that major expenditures, will continue to receive council's scrutiny and approval.

Clause 118 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of council) provides that the council consists of official, appointed, elected and additional members. Previously, it was optional for the council to include additional members. The new section

will require the council to include additional members which is necessary given that the new section 16 (Additional members) requires the council to appoint additional members.

The clause also omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that the council has 3 official members, namely the chancellor, vice-chancellor and the chairperson of the academic board. Previously, there were 5 official members. The new section is necessary because Protocol 3 provides that apart from the chancellor, vice-chancellor and the presiding member of the academic board, all members of a university governing body must be elected or appointed.

Clause 119 amends section 14 (Appointed members) to reduce the number of appointed members. The clause amends section 14(1) to reduce the number of appointed members from 8 to 5.

Clause 120 amends section 15 (Elected members) to reflect the new composition of elected members.

The clause:

- amends section 15(1) to reduce the total number of elected members from 7 to 3;
- amends section 15(2)(a) to reduce the number of academic staff from 3 to 1;
- omits sections 15(2)(d) and 15(4), as the alumni association is no longer required to appoint persons as elected members;
- omits unnecessary wording from section 15(3);
- amends section 15(5) to clarify that there is only one elected student member and renumbers 15(5) to become 15(4).

Clause 121 omits the existing section 16 and inserts a new section 16. The new section 16 (Additional members) provides that the council must appoint 3 additional members, one of which must be a graduate of the university. The new section 16 continues the requirement that an additional member must not be a student or a member of the university's academic or general staff.

Previously, section 16 made it optional for the council to appoint additional members. The new section will require the council to appoint additional members. This is considered necessary because the council will now directly appoint graduate representatives to the council as additional members. Also, the total number of members on the council will reduce

from 22 to 14 and by requiring the council to appoint additional members it is ensured that the council will have the full complement of 14 members.

Clause 122 amends section 17 (When council is taken to be properly constituted) as a consequence of the amendments to sections 13, 14, 15 and 16 which have reduced the number of members on the council. The clause provides that the council is properly constituted it has 8 or more members, whether they be additional, appointed, elected or official members.

Clause 123 amends section 18 (Appointed member's term of office) to provide that an appointed member is to be appointed for a term not more than 4 years. Previously, the Act provided that an appointed member was appointed for a term, not more than 3 years. The longer term of office will provide greater continuity in membership.

Clause 124 amends section 19 (Elected member's term of office) to:

- omit section 19(1) and insert a new section 19(1). The new section 19(1) provides that an elected member elected by academic staff and general staff holds office for 4 years.
- insert a new section 19(1A) to provide that an elected member elected by students holds office for 2 years.
- renumber section 19(1A) and the existing section 19(2) to become sections 19(2) and 19(3).

The longer term of office for elected members elected by the academic and general staff will provide greater continuity in membership.

The new section 19(1A) limits the term of office for the elected member elected by students to 2 years. A term of 2 years is considered more appropriate for the elected member elected by students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 125 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is to be appointed for a term of not more than 4 years, as decided by the council. Previously, the Act provided that an additional member was appointed for a term of not more than 3 years, as decided by the council. The longer term of office will provide greater continuity in membership.

Clause 126 amends section 21 (Failure to elect or appoint elected members) to omit section 21(1) and insert a new section 21(1). The new section 21(1) provides that where an entity does not elect or appoint a

person as the elected member by a day fixed by the council, the Minister may appoint a member of the entity as the elected member.

Previously, an entity would be required to elect or appoint more than 1 member given the requirements of section 15. The amendments to section 15 mean that an entity will only ever be required to elect or appoint 1 member and therefore the new reworded section 21(1) changes the references from the plural to the singular.

Clause 127 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of council).

The new section 23(1)(a) provides that a person is not eligible to become an elected, appointed or additional member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 23(1)(b) provides that a person is not eligible to become an elected, appointed or additional member if the person has a conviction for an indictable offence, other than an offence which makes the person ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an elected, appointed or additional member if they are disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that a person was ineligible to become an elected, appointed or additional member if they had been found guilty of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term '**conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term '**spent conviction**' is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as a member would result in the person being a member for 12 years or more, whether continuously or not. This new



section is necessary to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction because an official member continues as a member as long as they hold the position of chancellor, vice-chancellor or chairperson.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be elected or appointed as an elected, appointed or additional member.

Section 23(4) provides that a person's ineligibility to become an elected, appointed or additional member under section 23(1)(b) is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26 to allow a person to become an appointed, elected or additional member if the person has a conviction for an indictable offence.

Clause 128 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h). The new sections 24(1)(f) and 24(1)(g) provide that the office of an elected, appointed or additional member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an elected, appointed or additional member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26 to allow a person to continue as an appointed, elected or additional member if the person has been convicted of an indictable offence.

Clause 129 inserts new part 2, division 3A (Members' function and removing elected, appointed and additional members from office) and 3B (Extending terms of office) after section 26. This clause also inserts new sections 26A to 26C. Notes on these sections are as follows –

- The new section 26A (Member's function, and obligations about function) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university; and
- exercise reasonable skill, care and diligence; and
- disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Council may remove member from office) enables the council to remove an elected, appointed or additional member from office.

Section 26B(1) provides that the council may remove an elected, appointed or additional member from office if at least 9 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any members by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the council decides to remove a member from office under section 26B(1), as soon as practicable

the council must give the member a notice of the decision and the reasons for the decision. If the council has decided to remove an appointed member, the council must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the council gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the council's power to remove an appointed member from office under this section does not limit the Governor in Council's powers to remove, suspend, reinstate or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) of the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of elected, appointed and additional members.

Section 26C(1) provides that the Minister may extend the terms of office of elected, appointed and additional members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the council to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the council having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the council.

Section 26C(2) requires that the Minister must extend the terms of office of all elected, appointed or additional members by the same amount. This ensures equity between all members of the council.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office for appointed, elected and additional members.

Clause 130 amends section 30 (Chancellor) to renumber the existing section 30(4) to become section 30(5). The clause then inserts a new section 30(4) to provide that a person elected as chancellor must not be a student or a member of the university's academic staff or general staff. The new section 30(4) will assist in ensuring that there is a majority of external persons on the council as required by Protocol 5.

Clause 131 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 4 years, as fixed by the council. Previously, the Act provided that the deputy chancellor held office for the term, not longer than 3 years as fixed by the council. The amendment will ensure parity with the terms of office for most members, which will now be 4 years instead of 3 years.

Clause 132 inserts a new section 39AA after section 39. The new section 39AA (Chairperson of academic board) establishes that:

- there is a chairperson of the academic board;
- the council must decide who is the chairperson; and
- the chairperson holds office for the term, not longer than 3 years, as decided by the council.

Clause 133 inserts a new part 4A into the Act. The new part 4A (Matters relating to the offices of chancellor, deputy chancellor, vice-chancellor and chairperson) consists of new sections 39C to 39F. Notes on these sections are as follows –

- The new section 39C (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor, vice-chancellor or chairperson and the discretionary power of the council.

Section 39C(1)(a) provides that a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 39C(1)(b) provides that subject to sections 39C(2) and 39C(4), a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person has a conviction for an indictable offence, other than an offence that disqualifies the person from office under section 39C(1)(a).

The new section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or

becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor, vice-chancellor and chairperson with the requirements for elected, appointed and additional members, in that a person cannot become or continue as an elected, appointed or additional member if they have a conviction or have been convicted of an indictable offence, other than an offence which disqualifies the person from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 39C(2) provides that the council may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in section 39C(1)(b):

- restore a person as chancellor, vice-chancellor or chairperson by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor, vice-chancellor or chairperson despite the conviction.

Section 39C(3) provides that on the day the person receives the notice they are restored as chancellor, vice-chancellor or chairperson and the term of office for the person who has been elected or appointed to fill the vacancy, ends.

Section 39C(4) provides that if a person is restored as the chancellor, vice-chancellor or chairperson, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 39D (Council may remove chancellor, vice-chancellor or chairperson from office) enables the council to remove the chancellor, vice-chancellor or chairperson from office.

Section 39D(1) provides that the council may remove the chancellor, vice-chancellor or chairperson from office if at least 9 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a

two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 39D(2) requires that if the council decides to remove the chancellor, vice-chancellor or chairperson from office under section 39D(1), the council must give the chancellor, vice-chancellor or chairperson notice of the decision and the reasons for it as soon as practicable.

Section 39D(3) clarifies that the chancellor's, vice-chancellor's or chairperson's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

- The new section 39E (Particular matters about removal of vice-chancellor) provides in section 39E(1) that the council may remove the vice-chancellor from office under section 39D despite the vice-chancellor's terms of appointment. Section 39E(2) provides that a decision by the council to remove the vice-chancellor from office under section 39D does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 39E(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the appointment had been ended as permitted under the terms of appointment, or his or her term of office had ended.
- The new section 39F (Vacation of office) to clarify that the office of the chancellor, vice-chancellor or chairperson becomes vacant if a person cannot continue in the particular office under section 39C or the person has been removed from office under section 39D. Section 39F also clarifies the circumstances under which the office of the deputy chancellor becomes vacant.

Clause 134 amends section 56 (Making of university statutes) to renumber existing sections 56(2)(f) to 56(2)(i) to become sections 56(2)(h) to 56(2)(k). The clause also inserts new sections 56(2)(f) and 56(2)(g) to provide that the council may make a statute about the following matters:

- the process for removing a person from office under section 26B or 39D;
- the spending of funds under a delegation under new section 11(3).

Clause 135 amends section 60 (Forming and taking part in corporations). The clause amends section 60(1) to clarify that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 60(1)(a) to 60(1)(g).

Previously, the Act provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in sections 60(1)(a) to 60(1)(g). The amendment clarifies that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in sections 60(1)(a) to 60(1)(g).

Clause 136 inserts new sections 61A (Protection from liability), 61B (Report about a person's criminal history) and 61C (Delegation by Minister) after section 61. Notes on these sections are as follows –

- The new section 61A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 61A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.
- The new section 61B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member. This section is necessary to give the Minister the legislative authority to request criminal history information about a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member.

Section 61B(2) provides that the council may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor, vice-chancellor or chairperson, or an elected or additional member.

Section 61B(3) provides that the commissioner of police must comply with a request made under section 61B(1) or section 61B(2).

Section 61B(4) provides that the Minister or the council may only make a request under section 61B(1) or section 61B(2) about a person, if the person has given their written consent for the request.

Section 61B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 61B(1) or section 61B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 61B(6) requires that the Minister or the council must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 61B(7) defines the term '*criminal history*' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed and set aside convictions are not included as part of a person's criminal history.

- The new section 61C provides that the Minister may delegate the Minister's power under section 61B(1) to an appropriately qualified officer of the department.

Clause 137 inserts a new part 8, division 2 (Transitional provisions for the University Legislation Amendment Act 2005). The new division consists of new sections 77 to 87. Notes on these sections are as follows –

## Subdivision 1 Preliminary

- Section 77 (Definitions for div 2) provides the definitions for this division.

The term '*commencement*' means the commencement of the provision in which the term is used.

The term '*new additional members*' is referenced to section 83 and is defined to mean those persons appointed by the council as additional members within 1 year after the commencement of this Act.

The term '*new appointed members*' is referenced to section 79(2) and is defined as those persons recommended by the Minister to the



Governor in Council for appointment as appointed members within 1 year after the commencement of this Act.

The term *'pre-amended Act'* means the Act as in force before the commencement of the *University Legislation Amendment Act 2005*, part 7.

## **Subdivision 2 Provisions about council membership**

- The new section 78 (Continuation of official members) provides that despite the new section 13 (Official members), the chief executive or chief executive's nominee and the president of the student guild continue as official members until the new appointed members' terms of office start.

This ensures that the chief executive or chief executive's nominee and the president of the student guild continue as official members after the commencement of this Act, until the new appointed members' terms of office start.

- The new section 79 (Appointment of new appointed members) provides that within 1 year after the commencement of this Act, the Minister must recommend to the Governor in Council, 5 persons for appointment under section 14(2) as appointed members.
- The new section 80 (Continuation, and term of office, of appointed members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite section 14(1), the person continues as an appointed member; and
  - despite section 18, the person's term of office ends when the new appointed members' terms of office start, unless it sooner becomes vacant.

This section ensures that 8 appointed members appointed under the pre-amended Act continue as appointed members after the commencement of this Act. The section also provides that the terms of office for these 8 appointed members end when the new appointed members' terms of office start.

- The new section 81 (Continuation of elected members) applies to a person who was an elected member immediately before the commencement of this Act. The section provides that:
  - despite sections 15(1) and 15(2), the person continues as an elected member until the person's term of office ends under section 82 or sooner becomes vacant; and
  - despite sections 19(1) and 19(2), the person's term of office is 3 years.

This section ensures that the 7 elected members elected under the pre-amended Act continue as elected members after the commencement of this Act. The section also provides that the term of office for these 7 elected members end under section 82.

- The new section 82 (Ballot, and term of office, for elected members) provides that:
  - at least 14 days before the new appointed members are appointed, a ballot under section 15(3) of the post-amended Act must be conducted for elected members;
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(a) of the pre-amended Act, ends when the elected member mentioned in section 15(2)(a) of the post-amended Act is elected under the ballot, despite section 81(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in sections 15(2)(b) or 15(2)(c) of the pre-amended Act, ends when the elected member who is the member's successor is elected under the ballot, despite section 81(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(d) of the pre-amended Act, ends when the new additional members' terms of office start, despite section 81(3);
  - a person is taken to be elected under the ballot when the new appointed members' terms of office start;

- despite section 19(3), the term of office of a person elected under the ballot starts when the new appointed members' terms of office start;
  - the term '*post-amended Act*' is defined for this section to mean the Act as in force after the commencement of the *University Legislation Amendment Act 2005*, part 7.
- The new section 83 (Appointment of new additional members) provides that within 1 year after the commencement of this Act, the council must appoint 3 persons as additional members under section 16.
  - The new section 84 (Continuation, and term of office of additional members) applies to a person who was an additional member immediately before the commencement of this Act. This section provides that:
    - the person continues as an additional member; and
    - despite section 20, the person's term of office ends when the new additional members' terms of office start, unless it sooner becomes vacant.

This section ensures that if the council had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional members' terms of office start.

- The new section 85 (Council need not include additional members) provides that despite section 12 (Membership of council), the council does not have to include additional members before the new additional members' terms of office start. This section arises as a consequence of section 83, which provides that the council must appoint 3 additional members within 1 year after the commencement of this Act. Until the new additional members' terms of office start, the council will not be required to include additional members.
- The new section 86 (Dealing with casual vacancy in office of elected member) provides that where a casual vacancy arises in the office of an elected member after the commencement of this

Act but before the ballot is conducted in section 82(1), the vacancy is to be filled as if part 7 of this Act had not commenced.

### **Subdivision 3 Constitution of council**

- The new section 87 (Constitution of council) provides the despite section 17 and until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 12 or more members.

Clause 138 amends Schedule 2 (Dictionary) to replace the definition of '*indictable offence*', insert definitions for new terms and insert references to existing definitions contained within section 65 of the Act.

The term '*chairperson*' is defined to mean the chairperson of the academic board.

The terms '*commencing day*', '*continuing corporation*', '*former corporation*', '*previous council*', '*repealed Act*' and '*student association*' have the meaning given in section 65 (Definitions for div 1).

The term '*conduct obligation*' for a member, means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '*conviction*' is defined to mean a conviction other than a spent conviction.

The terms '*commencement*', '*new additional members*', '*new appointed members*' and '*pre-amended Act*' have the meaning given in section 77.

The term '*indictable offence*' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of the person's criminal history.

The term '*notice*' is defined to mean written notice.

The term '*spent conviction*' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

## **Part 8 Amendment of University of the Sunshine Coast Act 1998**

Clause 139 provides that this part amends the *University of the Sunshine Coast Act 1998*.

Clause 140 amends section 11 (Delegation) to omit the reference in section 11(1) to ‘the university’ and insert ‘the council’. This amendment corrects a technical error in the Act.

The clause also inserts a new section 11(3) to enable the council to delegate its power to approve the spending of funds available to the university by way of bequest, donation or special grant. Delegation of the council’s power to approve expenditure available from these sources is limited to matters not more than \$100 000.

Previously, the council has been unable to delegate the approval of any expenditure of funds available to the university by way of bequest, donation or special grant. This restriction has resulted in delays for approval of minor expenditure from these sources of funding. The amendment will provide the council with the flexibility to delegate the approval of expenditure of funds from these sources of not more than \$100 000, whilst ensuring that major expenditures, will continue to receive council’s scrutiny and approval.

Clause 141 omits the existing section 12 and inserts a new section 12. The new section 12 (Membership of council) provides that the council consists of official, appointed, elected and additional members. Previously, it was optional for the council to include additional members. The amendment will require the council to include additional members which is necessary given that the new section 16 (Additional members) will require the council to appoint additional members.

The clause also omits the existing section 13 and inserts a new section 13. The new section 13 (Official members) provides that there are 3 official members, namely the chancellor, the vice-chancellor and the chairperson of the academic board. Previously there were 5 official members. The new section is necessary because Protocol 3 provides that apart from the chancellor, vice-chancellor and the presiding member of the academic board, all members of a university governing body must be elected or appointed.

Clause 142 amends section 14 (Appointed members) to reduce the number of appointed members. The clause amends section 14(1) to reduce the number of appointed members from 8 to 6.

Clause 143 amends section 15 (Elected members) to alter the composition of elected members.

The clause amends section 15(1) to reduce the total number of elected members from 7 to 5. It also amends section 15(2)(a) to reduce the number of elected members elected by the full-time and part-time academic staff from 3 to 2 and amends section 15(2)(c) to increase the number of elected members elected by students from 1 to 2.

The clause then omits section 15(2)(d) and 15(3)(d), which relate to the election of members of the convocation as elected members, as the convocation no longer has a role in electing members for the council.

Clause 144 omits the existing section 16 and inserts a new section 16. The new section 16 (Additional members) provides that the council must appoint 4 additional members, 1 of which must be a graduate of the university. The new section 16 continues the requirement that an additional member must not be a student or a member of the university's academic or general staff.

Previously, section 16 made it optional for the council to appoint additional members. The amendment will require the council to appoint 4 additional members. This is considered necessary because the council will now directly appoint a graduate representative to the council as an additional member. Also, the total number of members on the council will reduce from 22 to 18 and by requiring the council to appoint additional members it is ensured that the council will have the full complement of 18 members.

Clause 145 amends section 17 (When council is taken to be properly constituted) as a consequence of the amendments to sections 13, 14, 15 and 16 which have reduced the number of members on the council. The clause provides that the council is properly constituted when it has 11 members whether they be additional, appointed, elected or official members.

Clause 146 amends section 18 (Appointed member's term of office) to provide that an appointed member is to be appointed for a term, not longer than 4 years. Previously, the Act provided that an appointed member was to be appointed for a term, not longer than 3 years. The longer term of office will provide greater continuity in membership.

Clause 147 amends section 19 (Elected member's term of office) to:

- omit the existing section 19(1) and insert a new section 19(1). The new section 19(1) provides that an elected member elected by the full-time and part-time academic staff and the full-time and part-time general staff holds office for 4 years.
- insert a new section 19(1A) to provide that the elected members elected by students hold office for 2 years.
- renumber section 19(1A) and the existing section 19(2) to become sections 19(2) and 19(3).

The longer term of office for elected members elected by the full-time and part-time academic and full-time and part-time general staff will provide greater continuity in membership.

The new section 19(1A) limits the term of office for the elected member elected by students to 2 years. A term of 2 years is considered more appropriate for the elected members elected by students because it falls within the usual period of time needed to complete undergraduate and postgraduate degrees.

Clause 148 omits the existing section 20 and inserts a new section 20. The new section 20 (Additional member's term of office) provides that an additional member is appointed for a term of not more than 4 years, as decided by the council. Previously, the Act provided that an additional member was appointed for a term of not more than 3 years, as decided by the council. The longer term of office will provide greater continuity in membership.

Clause 149 amends section 20A (Dealing with casual vacancy in office of an elected member) to omit existing sections 20A(5) and 20A(7) as a consequence of the amendment to section 15, which removes the role of the convocation in electing elected members.

The clause then inserts a reworded section 20A(5) which continues the existing ability of the council to authorise the council of the student guild to appoint a student to fill a casual vacancy in the office of an elected member elected by students at a meeting of the council of the student guild without conducting a ballot as required under section 20A(4).

Clause 150 amends section 22 (Casual vacancies) to omit the reference to 'an elected member' and provide that a person appointed or elected to fill a casual vacancy in the office of a member is appointed or elected for the balance of the term of office of the person's predecessor.

Clause 151 omits the existing section 23 and inserts a new section 23 (Ineligibility for membership of council).

The new section 23(1)(a) provides that a person is not eligible to become an additional, appointed or elected member if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 23(1)(b) provides that a person is not eligible to become an additional, appointed or elected member if the person has a conviction for an indictable offence, other than an offence which makes the person ineligible under section 23(1)(a).

The inclusion of the requirement that a person is ineligible to become an additional, appointed or elected member if they are disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth) is to satisfy the requirements of Protocol 3. Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Previously, the Act provided that that a person was ineligible to become an additional, appointed or elected member if they had been convicted of an indictable offence. This requirement has been reworded to clarify that the *Criminal Law (Rehabilitation of Offenders) Act 1986* applies. The term ‘**conviction**’ is defined in Schedule 2 (Dictionary) to mean a conviction other than a spent conviction.

The term ‘**spent conviction**’ is defined in Schedule 2 (Dictionary) to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

Section 23(2) provides that a person is not eligible to be appointed or elected as an additional, appointed or elected member if the person’s appointment or election as a member would result in the person being a member for 12 years or more, whether continuously or not. This new section is necessary to satisfy the requirements of Protocol 6, which provides that the maximum period to be served by members should not exceed 12 years, unless otherwise agreed by the majority of the university governing body.

Official members are not captured by this restriction because an official member continues as a member for as long as they hold the position of chancellor, vice-chancellor or chairperson of the academic board.

Section 23(3) provides that section 23(2) does not apply where a majority of members agree that the person may be appointed or elected as an additional, appointed or elected member.



Section 23(4) provides that a person's ineligibility to become an additional, appointed or elected member under section 23(1)(b), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to become an appointed, elected or additional member if the person has a conviction for an indictable offence.

Clause 152 amends section 24 (Vacation of office) to omit the existing sections 24(1)(f) and 24(1)(g) and insert new sections 24(1)(f) to 24(1)(h). The new sections 24(1)(f) and 24(1)(g) provide that the office of an additional, appointed or elected member becomes vacant if the member:

- is removed from office under the new section 26B; or
- is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

The new section 24(1)(h) provides that the office of an additional, appointed or elected member becomes vacant if the member is convicted of an indictable offence, other than an offence in which the member's office becomes vacant under section 24(1)(g).

The clause also omits the existing section 24(2) and inserts a new section 24(2). The new section 24(2) provides that the requirement under the new section 24(1)(h) that the office of an additional, appointed or elected member becomes vacant if the member is convicted of an indictable offence, other than an offence which the member's office becomes vacant under section 24(1)(g), is subject to sections 25 and 26. This continues the existing discretionary power the Minister and the council have respectively in sections 25 and 26, to allow a person to continue as an appointed, elected or additional member if the person is convicted of an indictable offence.

Clause 153 inserts new part 2, divisions 3A (Members' function and removing elected, appointed and additional members from office) and 3B (Extending terms of office) after section 26. This clause also inserts new sections 26A to 26C. Notes on these sections are as follows –

- The new section 26A (Member's function, and obligations about function) prescribes the functions of a member. Section 26A(1) provides that a member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.

Section 26A(2) provides that in performing the function, a member must:

- act honestly and in the best interests of the university; and
- exercise reasonable skill, care and diligence; and
- disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
- not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

Section 26A is inserted as Protocol 3 provides that the above requirements for members must be included in the authorising legislation of the university.

- The new section 26B (Council may remove member from office) enables the council to remove an additional, appointed or elected member from office.

Section 26B(1) provides that the council may remove an additional, appointed or elected member from office if at least 12 members are satisfied the member has not complied with their functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority if a member breaches the requirements for members listed in Protocol 3.

Section 26B(2) requires that if the council decides to remove a member from office under section 26B(1), as soon as practicable the council must give the member a notice of the decision and the reasons for the decision. If the council has decided to remove an appointed member, the council must also give the Minister a copy of the notice.

Section 26B(3) clarifies that if the council gives a member a notice under section 26B(2)(a), the member's term of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

Section 26B(4) clarifies that the council's power to remove an appointed member from office under this section does not limit the Governor in Council's powers to remove, suspend, reinstate

or reappoint an appointed member under sections 25(1)(b)(i) or 25(1)(b)(iii) of the *Acts Interpretation Act 1954*.

- The new section 26C (Minister may extend terms of office) enables the Minister to extend the terms of additional, appointed and elected members.

Section 26C(1) provides that the Minister may extend the terms of office of additional, appointed and elected members for not more than 1 year if the Minister is satisfied that the extension is in the best interests of the university and is necessary for the council to perform its functions and exercise its powers appropriately, effectively and efficiently. For example, the Minister could extend the term of office of all members during a review of the Act to avoid the council having to be reconstituted twice in a short period of time. In extending the terms of office, the Minister must give notice to the council.

Section 26C(2) requires that the Minister must extend the terms of office of all additional, appointed and elected members by the same amount. This ensures equity between all members of the council.

Section 26C(3) clarifies that the extension can only apply to members holding office when the Minister gives the notice under section 26C(1).

Section 26C(4) provides that the Minister cannot extend the terms of office of members for more than 1 year, by acting again under section 26C(1) and that this section applies despite sections 18, 19(1), 19(2) and 20 which relate to the terms of office for appointed, elected and additional members.

Clause 154 amends section 30 (Chancellor) to renumber the existing section 30(4) to become section 30(5). The clause then inserts a new section 30(4) to provide that a person elected as chancellor must not be a student or a member of the university's academic staff or general staff. The new section 30(4) will assist in ensuring that there is a majority of external persons on the council as required by Protocol 5.

Clause 155 amends section 31 (Deputy chancellor). The clause amends section 31(3) to provide that the deputy chancellor holds office for the term, not longer than 4 years, fixed by the council. Previously, the Act provided that the deputy chancellor held office for the term, not longer than 3 years. This amendment will ensure parity with the terms of office for most members, which will now be 4 years instead of 3 years.

Clause 156 omits part 4, division 1 (Convocation).

Clause 157 inserts a new section 40AA after section 40. The new section 40AA (Chairperson of academic board) establishes that:

- there is a chairperson of the academic board;
- the council must decide who is the chairperson; and
- the chairperson holds office for the term, not longer than 3 years, as decided by the council.

Clause 158 amends section 40A (Excluded matters for Corporations legislation). The clause omits section 40A(1)(a) and renumbers sections 40A(1)(b) and 40A(1)(c) as sections 40A(1)(a) and 40A(1)(b).

Clause 159 inserts a new part 4A into the Act. The new part 4A (Matters relating to the offices of chancellor, deputy chancellor, vice-chancellor and chairperson) consists of new sections 40C to 40F. Notes on these sections are as follows –

- The new section 40C (Disqualification from office) provides the circumstances under which a person cannot become or continue as the chancellor, vice-chancellor or chairperson and the discretionary power of the council.

Section 40C(1)(a) provides that a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). Section 40C(1)(b) provides that subject to sections 40C(2) and 40C(4), a person cannot become or continue as chancellor, vice-chancellor or chairperson if the person has a conviction for an indictable offence, other than an offence in relation to which the person is disqualified from office under section 40C(1)(a).

This section is necessary because Protocol 3 provides that a member must immediately vacate office if the person is or becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth). The section also provides parity for the chancellor, vice-chancellor or chairperson with the requirements for additional, appointed and elected members, in that a person cannot become or continue as an additional, appointed or elected member if they have a conviction or have been convicted of an indictable offence, other than an offence which disqualifies the person from managing

corporations under Part 2D.6 of the *Corporations Act 2001* (Cwlth).

Section 40C(2) provides that the council may, if considered reasonable and having regard to the circumstances of the indictable offence mentioned in section 40C(1)(b):

- restore a person as chancellor, vice-chancellor or chairperson by giving the person a notice. The notice is to also state that the person may be re-elected or reappointed despite the conviction; or
- give written approval for the person to become the chancellor, vice-chancellor or chairperson despite the conviction.

Section 40C(3) provides that on the day the person receives the notice they are restored as chancellor, vice-chancellor or chairperson and the term of office for the person who has been elected or appointed to fill the vacancy ends.

Section 40C(4) provides that if a person is restored as the chancellor, vice-chancellor or chairperson, the person's term of office ends when it would have ended if the person had not been convicted of the offence.

- The new section 40D (Council may remove chancellor, vice-chancellor or chairperson from office) enables the council to remove the chancellor, vice-chancellor or chairperson from office.

Section 40D(1) provides that the council may remove the chancellor, vice-chancellor or chairperson from office if at least 12 members are satisfied the member has not complied with the functions under section 26A(2) or a conduct obligation. This section is necessary as Protocol 3 provides that a university governing body must have the power to remove any member by a two-thirds majority, if a member breaches the requirements for members listed in Protocol 3.

Section 40D(2) requires that if the council decides to remove the chancellor, vice-chancellor or chairperson from office under section 40D(1), the council must give the chancellor, vice-chancellor or chairperson notice of the decision and the reasons for it as soon as practicable.

Section 40D(3) clarifies that the chancellor's, vice-chancellor's or chairperson's terms of office ends on the day the member receives the notice or the day stated in the notice for that purpose, whichever is the later of the two.

- The new section 40E (Particular matters about removal of vice-chancellor) provides in section 40E(1) that the council may remove the vice-chancellor from office under section 40D despite the vice-chancellor's terms of appointment. Section 40E(2) provides that a decision by the council to remove the vice-chancellor from office under section 40D does not affect the vice-chancellor's right to claim compensation or other entitlements under his or her terms of appointment which apply when the appointment ends. Section 40E(2) also provides that the vice-chancellor may only claim compensation and other entitlements under his or her terms of appointment as if the appointment had been ended as permitted under the terms of appointment, or his or her term of office had ended.
- The new section 40F (Vacation of office) to clarify that the office of the chancellor, vice-chancellor or chairperson becomes vacant if a person cannot continue in the particular office under section 40C or the person has been removed from office under section 40D. Section 40F also clarifies the circumstances under which the office of the deputy chancellor becomes vacant.

Clause 160 amends section 58 (Making of university statutes) to omit the existing section 58(2)(e) which relates to the membership of the convocation.

The clause also inserts new sections 58(2)(fa) and 58(2)(fb) to provide that the council may make a statute about the following matters:

- the process for removing a person from office under section 26B or 40D;
- the spending of funds under a delegation under new section 11(3).

The clause then renumbers sections 58(2)(f) to 58(2)(j) as sections 58(2)(e) to 58(2)(k).

Clause 161 amends section 63 (Forming and taking part in corporations). The clause amends section 63(1) to clarify that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in section 63(1)(a) to 63(1)(g).

Previously, the Act provided that the university may be a member of, form, take part in forming or manage a corporation whose objects included the objects set out in sections 63(1)(a) to 63(1)(g). The amendment clarifies that the university may be a member of, form, take part in forming or manage a corporation whose objects include any of the objects set out in section 63(1)(a) to 63(1)(g).

Clause 162 inserts new sections 64A (Protection from liability), 64B (Report about person's criminal history) and 64C (Delegation by Minister) after section 64. Notes on these sections are as follows –

- The new section 64A(1) provides that a member is not civilly liable for an act done or omission made, honestly and without negligence under the Act. Section 64A(2) provides that if the civil liability does not attach to the member, the liability attaches instead to the university.
- The new section 64B(1) enables the Minister to request the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, of a person the Minister is considering recommending to the Governor in Council for appointment as an appointed member. This section is necessary to give the Minister the legislative authority to request criminal history information about persons the Minister is considering recommending to the Governor in Council for appointment as appointed members.

Section 64B(2) provides that the council may ask the commissioner of the police service to provide a written report about the criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history of a person, to decide whether the person is eligible to be the chancellor, vice-chancellor or chairperson, or an elected or additional member.

Section 64B(3) provides that the commissioner of police must comply with a request made under section 64B(1) or section 64B(2).

Section 64B(4) provides that the Minister or the council may only make a request under section 64B(1) or section 64B(2) about a person, if the person has given their written consent for the request.

Section 64B(5) limits the duty imposed on the commissioner of police to comply with a request made under section 64B(1) or section 64B(2), to only that information in the possession of the commissioner or to which the commissioner has access.

Section 64B(6) requires that the Minister or the council must ensure that a report about a person's criminal history is destroyed as soon as practicable after it is no longer needed for the purpose it was requested.

Section 64B(7) defines the term '*criminal history*' of a person for this section, to mean a person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

This means that quashed or set aside convictions are not included as part of a person's criminal history.

- The new section 64C provides that the Minister may delegate the Minister's power under section 64B(1) to an appropriately qualified officer of the department.

Clause 163 inserts new part 8, division 2 (Transitional provisions for the University Legislation Amendment Act 2005). The new division consists of new sections 83 to 93. Notes on these sections are as follows –

## Subdivision 1 Preliminary

- The new section 83 (Definitions for div 2) provides the definitions for the division.

The term '*commencement*' means the commencement of the provision in which the term is used.

The term '*new additional members*' is referenced to section 89 and means those persons appointed by the council as additional members within 1 year after the commencement of this Act.

The term '*new appointed members*' is referenced to section 85(2) and means those persons appointed by the Governor in Council as appointed members within 1 year after the commencement of this Act.



The term '*pre-amended Act*' means the Act as in force before the commencement of the *University Legislation Amendment Act 2005*, part 8.

## **Subdivision 2 Provisions about council membership**

- The new section 84 (Continuation of official members) provides that despite the new section 13 (Official members), the chief executive or the chief executive's nominee and the president of the student guild or the president's nominee, continue as official members until the new appointed members' terms of office start.

This ensures that the chief executive or the chief executive's nominee and the president of the student guild or the president's nominee will continue as official members after the commencement of this Act until the new appointed members' terms of office start.

- The new section 85 (Appointment of new appointed members) provides that within 1 year after the commencement of this Act, the Minister must recommend to the Governor in Council 6 persons for appointment under section 14(2), as appointed members.
- The new section 86 (Continuation, and term of office, of appointed members) applies to a person who was an appointed member immediately before the commencement of this Act. The section provides that:
  - despite section 14(1), the person continues as an appointed member; and
  - despite section 18, the person's term of office ends when the new appointed members' terms of office start, unless it sooner becomes vacant.

This section ensures that the 8 appointed members appointed under the pre-amended Act continue as appointed members after the commencement of this Act. The section also provides that the terms of office for these 8 appointed members end when the new appointed members' terms of office start.

- The new section 87 (Continuation of elected members) applies to a person who was an elected member immediately before the commencement of this Act. The section provides that:
  - despite sections 15(1) and 15(2), the person continues as an elected member until the person's term of office ends under section 88 or sooner becomes vacant; and
  - despite sections 19(1) and 19(2), the person's term of office is 3 years.

This section ensures that the 7 elected members elected under the pre-amended Act continue as elected members after the commencement of this Act. The section also provides that the terms of office for these 7 elected members end under section 88.

- The new section 88 (Ballot, and term of office, for elected members) provides that:
  - at least 14 days before the new appointed members are appointed, a ballot under section 15(3) of the post-amended Act must be conducted for elected members;
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(a) of the pre-amended Act, ends when the elected members mentioned in section 15(2)(a) of the post-amended Act are elected under the ballot, despite section 87(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(b) of the pre-amended Act, ends when the elected member who is the member's successor is elected under the ballot, despite section 87(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(c) of the pre-amended Act, ends when the elected members mentioned in section 15(2)(c) of the post-amended Act are elected under the ballot, despite section 87(3);
  - the term of office for a person who immediately before the ballot is conducted, is an elected member mentioned in section 15(2)(d) of the pre-amended Act,

ends when the new additional members' terms of office start, despite section 87(3);

- a person is taken to be elected under the ballot when the new appointed members' terms of office start;
  - despite section 19(3), the term of office of a person elected under the ballot starts when the new appointed members' terms of office start;
  - the term '*post-amended Act*' is defined for this section to mean the Act as in force after the commencement of the *University Legislation Amendment Act 2005*, part 8.
- The new section 89 (Appointment of new additional members) provides that within 1 year after the commencement of this Act, the council must appoint 4 persons as additional members under section 16.
  - The new section 90 (Continuation, and term of office, of additional members) applies to a person who was an additional member immediately before the commencement of this Act. This section provides that:
    - the person continues as an additional member; and
    - despite section 20, the person's term of office ends when the new additional members' terms of office start, unless it sooner becomes vacant.

This section ensures that if the council had appointed 2 persons as additional members under the pre-amended Act, these persons continue as additional members after the commencement of this Act. The section also provides that the terms of office for these 2 additional members end when the new additional members' terms of office start.

- The new section 91 (Council need not include additional members) provides that despite section 12 (Membership of council), the council does not have to include additional members before the new additional members' terms of office start.

This section arises as a consequence of section 89, which provides that the council must appoint 4 additional members within 1 year after the commencement of this Act. Until the new

additional members' terms of office start, the council will not be required to include additional members.

- The new section 92 (Dealing with casual vacancy in office of elected member) provides that where a casual vacancy arises in the office of an elected member after the commencement of this Act but before the ballot is conducted in section 88(1), the vacancy is to be filled as if part 8 of this Act had not commenced.

### **Subdivision 3 Constitution of council**

- The new section 93 (Constitution of council) provides that despite section 17 and until the new appointed members' terms of office start, the council is taken to be properly constituted when it has 12 or more members.

Clause 164 amends Schedule 2 (Dictionary) to omit the existing definitions for the following terms, '*additional member*', '*appointed member*', '*convicted*', '*elected member*', '*indictable offence*' and '*official member*'.

The clause then inserts:

- new definitions for the terms, '*additional member*', '*appointed member*', '*elected member*', '*indictable offence*' and '*official member*';
- definitions for new terms; and
- references to existing definitions contained within section 68 of the Act.

The term '*additional member*' is to be defined to mean generally a member of the council appointed under section 16. However, for part 8, division 1 it has the meaning given in section 68.

The term '*appointed member*' is defined to mean generally a member of the council appointed under section 14. However, for part 8, division 1 it has the meaning given in section 68.

The term '*chairperson*' is defined to mean the chairperson of the academic board.

The terms '*commencement*', '*new additional members*', '*new appointed members*' and '*pre-amended Act*' are referenced to section 83 and have the meaning given in that section.

The terms '*commencing day*', '*continuing corporation*', '*former corporation*', '*previous council*', '*QUT*', '*repealed Act*', '*union*' and '*university college*' are referenced to section 68 and have the meaning given in that section.

The term '*conduct obligation*' for a member, means an obligation that is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994* and must be complied with by the member. Under the *Public Sector Ethics Act 1994* the university as a public sector entity is required to have a code of conduct. A member must comply with the conduct obligations that apply to members of the council as set out in the university's code of conduct.

The term '*conviction*' is defined to mean a conviction other than a spent conviction.

The term '*elected member*' is defined to mean generally a member of the council elected or appointed under section 15. However for part 8, division 1 it has the meaning given in section 68.

The term '*indictable offence*' is defined to include an indictable offence dealt with summarily, whether or not section 659 of the Criminal Code applies to the indictable offence. This enables an indictable offence that has been dealt with summarily to form part of a person's criminal history.

The term '*notice*' is defined to mean written notice.

The term '*official member*' is defined to mean generally a person who is an official member of the council under section 13. However, for part 8, division 1 it has the meaning given in section 68.

The term '*spent conviction*' is defined to mean a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived by section 11 of that Act.

## **Part 9 Consequential and other amendments**

Clause 165 (Consequential and other amendments) provides that the Schedule amends the Acts it mentions.

## **Schedule**

The Schedule (Consequential and other amendments) provides that the schedule amends the legislation mentioned in it. Notes on the amendments included in the schedule follow –

### **Central Queensland University Act 1998**

Item 1 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 2 amends sections 25(1) and 26(1) to insert ‘mentioned in section 23(1)(b) or 24(1)(h)’ after indictable offence.

Item 3 amends sections 25(1)(a) and 26(1)(a) to omit the term ‘written’ as a consequence of the inclusion of the definition for the term ‘*notice*’.

Item 4 renumbers part 4, divisions 2 to 5 to become part 4, divisions 1 to 4.

Item 5 renumbers sections 40AA and 40A to become sections 40A and 40B.

Item 6 amends the part 8 heading. The amendment omits the existing heading and inserts the following new heading for part 8 and division 1:

### **Part 8                      Repeal and transitional provisions**

#### **Division 1                      Repeal provision, and transitional provisions before the University Legislation Amendment Act 2005.**

Item 7 amends the heading of section 66 to omit the reference ‘pt 8’ and insert a reference to ‘div 1’.

Item 8 amends section 66 to replace the reference to ‘In this part’ with ‘In this division’. This amendment arises as a consequence to the insertion of a new part 8, division 2 by this Act.

Item 9 amends section 66 to omit the existing definition of the term '*commencing day*' and insert a new definition. The term '*commencing day*' is defined to mean the day the provision in which the term is used commences.

Item 10 amends sections 2(1)(b) and 9(4) in Schedule 1 (Control of traffic and conduct on university land) to omit 'written'. This amendment arises as the definition of '*notice*' in Schedule 2 (Dictionary) provides that a notice means a written notice.

## **Griffith University Act 1998**

Item 1 consequentially amends sections 21(1), 25(1)(a) and 26(1)(a) to omit the reference to 'written'.

Item 2 amends sections 25(1) and 26(1) to insert 'mentioned in section 23(1)(b) or 24(1)(h)' after indictable offence.

Item 3 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 4 inserts before section 30 the following heading for division 1:

### **Division 1                      Chancellor, deputy chancellor and vice-chancellor**

Item 5 omits the existing heading for section 70 and inserts the following new heading:

#### **Definitions for div 1**

In this division –

Item 6 consequentially amends sections 2(1)(b) and 9(4) of Schedule 1 (Control of traffic and conduct on university land), to omit 'written'.

## **James Cook University Act 1997**

Item 1 amends sections 21(1), 25(1)(a) and 26(1)(a) to omit ‘written’.

Item 2 amends sections 25(1) and 26(1) to insert ‘mentioned in section 23(1)(b) or 24(1)(h)’ after indictable offence.

Item 3 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 4 renumbers sections 40AA and 40A to become sections 40A and 40B.

Item 5 omits the existing heading of part 8 and inserts the following new heading:

### **Part 8                      Repeal and transitional provisions**

#### **Division 1                Repeal provision**

Item 6 amends section 8(4) of Schedule 1 (Control of traffic and conduct on university land) to omit ‘written’.

## **Queensland University of Technology Act 1998**

Item 1 amends sections 21(1), 25(1)(a) and 26(1)(a) to omit ‘written’.

Item 2 amends sections 25(1) and 26(1) to insert ‘mentioned in section 23(1)(b) or 24(1)(h)’ after indictable offence.

Item 3 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 4 amends sections 2(1)(b) and 9(4) of Schedule 1 (Control of traffic and conduct on university land) to omit ‘written’.



## **University of Queensland Act 1998**

Item 1 amends sections 21(1), 25(1)(a) and 26(1)(a) to omit ‘written’.

Item 2 amends sections 25(1) and 26(1) to insert ‘mentioned in section 23(1)(b) or 24(1)(h)’ after indictable offence.

Item 3 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 4 renumbers part 4, divisions 2 to 4 to become part 4, divisions 1 to 3.

Item 5 renumbers sections 35AA and 35A to become sections 35A and 35B.

Item 6 omits the existing heading of part 8 and inserts the following new heading:

### **Part 8                      Transitional provisions**

#### **Division 1                      Transitional provision for continuing in office particular members holding office in 2004.**

Item 7 amends sections 2(1)(b) and 9(4) of Schedule 1 (Control of traffic and conduct on university land) to omit ‘written’.

## **University of Southern Queensland Act 1998**

Item 1 amends the heading for section 20A, to omit ‘particular elected members’ and insert ‘elected member’.

Item 2 amends section 20A(1) to omit ‘member, other than a member mentioned in section 15(2)(d)’ and insert ‘member’.

Item 3 amends sections 25(1) and 26(1) to insert ‘mentioned in section 23(1)(b) or 24(1)(h)’ after indictable offence.

Item 4 amends sections 25(1)(a) and 26(1)(a) omits ‘written’.

Item 5 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 6 renumbers sections 39AA and 39A to become sections 39A and 39B.

Item 7 inserts the following new heading for part 8:

## **Part 8                    Repeal and transitional provisions**

### **Division 1                Repeal provision, and transitional provisions before the University Legislation Amendment Act 2005.**

Item 8 amends the heading of section 65 to omit ‘pt 8’ and insert ‘div 1’.

Item 9 amends section 65 to omit ‘In this part’ and insert ‘In this division’.

Item 10 amends section 65 to omit the existing definition of ‘*commencing day*’ and insert a new definition. The term ‘*commencing day*’ is defined to mean the day the provision in which the term is used commences.

Item 11 amends sections 2(1)(b) and 9(4) of Schedule 1 (Control of traffic and conduct on university land) to omit ‘written’.

## **University of the Sunshine Coast Act 1998**

Item 1 amends sections 21(1), 25(1)(a) and 26(1)(a) to omit ‘written’.

Item 2 amends sections 25(1) and 26(1) to insert ‘mentioned in section 23(1)(b) or 24(1)(h)’ after indictable offence.

Item 3 renumbers part 2, divisions 3A, 3B and 4 to become part 2, divisions 4, 5 and 6.

Item 4 renumbers part 4, divisions 2 to 5 to become part 4, divisions 1 to 4.

Item 5 renumbers sections 40AA and 40A to become sections 40A and 40B.

Item 6 omits the existing heading for part 8 and inserts the following new heading:

**Part 8                    Repeal and transitional provisions**

**Division 1                Repeal provision, and transitional provisions for Act No. 47 of 1998.**

Item 7 amends the existing heading of section 68 to omit ‘pt 8’ and insert ‘div 1’.

Item 8 amends section 68 to omit ‘In this part’ and insert ‘In this division’.

Item 9 amends section 68 to omit the existing definition of ‘*commencing day*’ and insert a new definition. The term ‘*commencing day*’ means the day the provision in which the term is used commences.

Item 10 amends sections 2(1)(b) and 9(5) of Schedule 1 (Control of traffic and conduct on university land) to omit ‘written’.