

# UNIVERSITY LEGISLATION AMENDMENT BILL 2017

## Explanatory Notes

### Short title

The short title of the Bill is the University Legislation Amendment Bill 2017 (the Bill).

### Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- remove the capacity for universities to make statutes;
- require universities to have a policy for the election of staff and student representatives on university governing bodies;
- remove certain limitations on the delegation of powers and functions by university governing bodies;
- improve the integrity of the membership of university governing bodies;
- implement governance reforms for James Cook University; and
- make technical amendments relevant to some universities.

The seven Queensland public universities are established under their own Acts, collectively referred to as the university Acts:

- Central Queensland University (CQU) - *Central Queensland University Act 1998* (CQU Act);
- Griffith University (GU) - *Griffith University Act 1998* (GU Act);
- James Cook University (JCU) - *James Cook University Act 1997* (JCU Act);
- Queensland University of Technology (QUT) - *Queensland University of Technology Act 1998* (QUT Act);
- University of Queensland (UQ) - *University of Queensland Act 1998* (UQ Act);
- University of Southern Queensland (USQ) - *University of Southern Queensland Act 1998* (USQ Act); and
- University of the Sunshine Coast (USC) - *University of the Sunshine Coast Act 1998* (USC Act).

Under the university Acts, each university is governed by a governing body, referred to as the council (or in the case of the UQ, the senate). The university Acts prescribe the size, composition and functions of the governing body, the powers of delegation and the power to make university statutes about certain matters.

Prior to January 2012, the Queensland Government regulated higher education providers in accordance with the National Protocols for Higher Education Approval Processes. Entities wishing to be established as a higher education provider in Queensland applied to the Minister for approval under the now repealed *Higher Education (General Provisions) Act 2008*.

Since 2012, Australian universities have been regulated by the Tertiary Education Quality and Standards Agency (TEQSA), a Commonwealth agency established under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). TEQSA adopts a standards and risk-based approach to the regulation and quality assurance of Australia's higher education providers and is responsible for the registration of providers and the accreditation of courses. The Queensland Government therefore has no role in the approval of entities as higher education providers or their compliance with the TEQSA standards. Queensland's regulation of the universities is now limited to oversight of the public universities in so far as they are statutory bodies.

As a result of the transfer of regulatory responsibility to TEQSA, and in response to issues raised by universities, the Department of Education and Training (DET), in consultation with universities, reviewed the university Acts to identify ways to reduce the regulatory burden on universities and modernise the legislative framework. The Bill implements amendments identified during this review.

### **University statutes**

All universities have the power to make statutes for a range of matters listed in their establishing Acts. Matters that may be provided for by a university statute include, for example: admission and enrolment of students; student discipline; the process for election of elected members to the university governing body; and making and publishing of university rules. For the most part, the making of statutes is at the discretion of the university. However, in limited circumstances, a university statute is required for the effective operation of a university's Act. For example, the JCU Act requires the JCU council to make a statute to determine the membership of its convocation.

There has been decreasing use of statutes as a means of setting university policy. Universities have in recent times generally preferred to use policies in place of statutes. Currently, only five universities have statutes in place. These statutes deal with issues such as: membership of the convocation or alumni (JCU and QUT); conduct of council elections (JCU, UQ and USQ); and making and notifying of university rules (JCU, QUT, USC and the USQ). One university has a statute relating to fees (USQ) and one university has a statute relating to awards and courses of study (QUT). No university has a statute in place that deals with student discipline.

It is proposed to remove the power for Queensland's public universities to make statutes, instead allowing them to rely on administrative documents such as policies or guidelines. However, to ensure the integrity of the election of elected members to university governing bodies, including staff and student representatives, it is proposed to require universities to adopt an election policy.

### **Requirement for an election policy**

All university governing bodies include a number of elected members, including staff and students and for some universities, convocation or alumni members. The university Acts provide that university governing bodies may make a statute about the election of the elected members to the governing body. JCU, USQ and UQ have a statute that provides for the conduct of elections for the governing body and QUT has a statute that provides for the election of alumni to the governing body.

To ensure that the removal of statutes does not impact on transparency around election processes or the opportunity for staff and students to participate in the election of staff and

student members to serve on the governing body, the Bill will require universities to make and publish a policy about the conduct of elections. Further the Bill will set out key elements that must be included in each university's election policy.

### **Delegation of powers and functions**

Each university Act provides that the university governing body may delegate its powers to an appropriately qualified member of the council, committee or member of the university staff. Under the current university Acts, the power of delegation is limited and a governing body must not delegate its power to: make university statutes or rules; adopt the university's annual budget; or approve the spending of funds available to the university by way of bequest, donation or special grant. Note, this Bill proposes to remove the capacity to make, or delegate the power to make, university statutes.

For all universities, except GU, the relevant university Act provides an exception to the limit on delegating expenditure of funds available to the university by way of bequest, donation or special grant. For QUT and UQ, the exception allows the governing body to delegate the power to approve spending of funds if the expenditure is for a scholarship or prize funded by bequest, donation or special grant. For CQU, JCU, USQ and USC, the exception allows the governing body to delegate the power to approve spending of funds for a matter funded by bequest, donation or special grant, if the expenditure is for an amount that is not more than \$100,000.

The manner in which a university may deal with funds available by bequest, donation or special grant is treated differently to the way a university may make decisions about the spending of funds, including larger amounts, from other sources. It is proposed to remove the limitation on delegating expenditure of funds available to the university by way of bequest, donation or special grant. This will reduce the administrative burden the current restrictions create and establish a consistent approach across the university Acts.

### **Subdelegation**

The *Acts Interpretation Act 1954* (AIA), section 27A(12), provides that a function or power may be subdelegated only if the Act expressly authorises the function or power to be subdelegated. There is no power in the university Acts allowing a governing body, when delegating its powers to the vice-chancellor, to permit the vice-chancellor to further delegate that power to an appropriately qualified member of the university staff. It is proposed to allow such subdelegation.

The vice-chancellor of each university is accountable to the governing body. Giving the university governing body the power to, when delegating its functions or powers to the vice-chancellor, permit the vice-chancellor to further delegate that function or power, is consistent with modern corporate governance and will reduce red tape while still ensuring that responsibility and accountability for decision-making remains ultimately with the governing body.

### **Ensuring the integrity of the membership of the governing body**

The university Acts prescribe when a person is ineligible to be an elected, appointed or additional member of a university governing body. The circumstances prescribed include where a person is disqualified from managing a corporation under the *Commonwealth Corporations Act 2001* (Corporations Act) or convicted of an indictable offence. The university Acts define 'indictable offence' to include indictable offences dealt with summarily whether or not the Criminal Code section 659 applies.

During the review of the university Acts it was identified that:

- there was no obligation on members of the university governing bodies to disclose if they have become ineligible to be a member of the governing body;
- the definition of indictable offence used in the university Acts does not align with the definition applied to most other statutory bodies within the education and training portfolios; and
- there is no provision about the confidentiality of criminal history information protecting a person's criminal history information from further disclosure.

It is proposed to amend the university Acts to improve the integrity of the university governing bodies by providing for the notification of changes in circumstances and the protection of confidential information from inappropriate release.

### **JCU governance reforms**

During the review of university Acts, it was identified that the JCU Council faces particular difficulties ensuring it has the appropriate mix of skills, expertise, experience and corporate knowledge.

JCU is governed by a twenty-two member council comprising three official members, eight members appointed by the Governor in Council, ten elected members and one additional member appointed by the council.

In comparison to all other Queensland universities, JCU has the equal largest governing body and the greatest number of elected members. The elected members comprise: two members of the general staff; three members of the academic staff; one undergraduate student; one postgraduate student; one undergraduate or postgraduate student; and two members of the convocation. The JCU Council has the power to appoint only one additional member, which is the lowest number of additional members across all Queensland public universities.

JCU has advised that the governance structure prescribed in the JCU Act makes it difficult for the JCU Council to ensure it has the appropriate balance of skills, experience, expertise and corporate knowledge necessary to provide strategic leadership to the university.

JCU was invited to develop a new governance structure, in consultation with its university community, for consideration by Government. Following significant consultation with its stakeholders about the proposed governance structure, the JCU Council submitted a proposal for reform to the Minister for Education. Government supports the governance model proposed by JCU on the basis that it: achieves an appropriate balance between flexibility, diversity of membership and staff and student representation; and recognises the important role JCU plays in the Townsville community and Far North Queensland as both a major employer and leading education and research institution. It is therefore proposed to give effect to the governance reforms sought by JCU in this Bill.

Included with the JCU submission about governance reforms was a request for a range of other minor and technical amendments to the JCU Act to amend terminology and better reflect the current JCU operating environment.

### **Minor amendments**

For some universities, the university Acts provide that the deputy chancellor is to act as chancellor when the chancellor is absent from the State. This provision does not reflect the current operating environment for universities where the chancellor may be out of the State on university business or might be absent from the State and due to modern technology can

continue to perform the duties of chancellor. It is proposed to amend the university Acts to reflect the modern operating environment for universities.

Section 35A(3) of the UQ Act provides that the president of the Academic Board is to hold office for the term, not longer than one year, decided by the Senate. In contrast, the equivalent position at CQU, JCU, USC, and USQ may hold office for the term of not more than three years. The Bill supports UQ's request for an amendment to allow for a longer period of appointment for the president of the Academic Board.

For all universities, governing bodies include members appointed by the Governor in Council. These members may be appointed for a term of up to four years. The university Acts provide that a person is ineligible for appointment to the governing body if the appointment would result in the person being a member of the governing body for 12 years or more, unless the majority of the governing body agree the person may be appointed. As currently drafted the provision in the university Acts does not achieve the original policy intent, which was to allow members to serve 12 years, for example, three terms of four years, before the approval of the governing body was required to allow the person to serve a subsequent fourth term. The Bill addresses this.

## **Achievement of policy objectives**

### **University statutes**

The Bill removes provisions from the university Acts that allow, and in some cases require, universities to make university statutes.

### **Requirement for an elections policy**

The Bill inserts a new provision into the university Acts that requires the university governing body to make and publish on the university's website a policy about elections of elected members to the governing body. The Bill requires that the election policy is to include provisions to ensure that: only eligible persons may vote; a person cannot vote more than once; voting is done by secret ballot; a person is not improperly influenced in voting; and the integrity and security of the voting system is maintained.

The Bill requires that the election policy include provisions about: notifying the election period; nomination of candidates; publication of results; and the process for making and resolving complaints.

### **Delegation of powers and functions**

The Bill removes the restrictions in university Acts that limit the ability for governing bodies to delegate decisions to spend funds that are available to the university by way of bequest, donation or special grant. Under the amendment, universities will be able to deal with decision making relating to funds available by bequest, donation or special grant in the same manner that the university deals with decision making for amounts from other sources.

### **Subdelegation**

The Bill provides a power for the vice-chancellors to subdelegate functions and powers that have been delegated to them by a governing body to an appropriately qualified member of the university staff, provided the governing body has permitted the subdelegation. This amendment reduces red tape. However, the university governing body remains responsible for the performance of the delegated and subdelegated powers and functions.

### **Ensuring the integrity of the membership of university governing bodies**

The Bill requires members of a university governing body to disclose matters that would mean the person is ineligible to be a member of the governing body (such as a disqualification under the Corporations Act or conviction for an indictable offence).

The Bill also amends the definition of indictable offence in the university Acts so that indictable offences heard summarily will not disqualify a person from membership on a university governing body. This aligns with all other statutory bodies within the education and training portfolio and is considered an appropriate test for ensuring the integrity of appointments to the governing body.

The Bill provides that information about a person's criminal history or disqualification under the Corporations Act is confidential and may only be disclosed in certain circumstances. This is a standard requirement found in other legislation relating to criminal history checks for significant appointments and is an appropriate protection against the inappropriate disclosure of personal information.

### **JCU governance reforms**

The Bill modernises the governance structure of the JCU Council by allowing JCU greater control in relation to the membership and composition of the governing body. The Bill implements this change by inserting a new Division 3A into the JCU Act.

Under the Bill, the JCU Council may make a resolution, passed by a two-thirds majority, about the size and composition of the council. In accordance with the provisions in the Bill the resolution must provide for a council size of between 11 and 21 members, including:

- two to three official members (chancellor; vice-chancellor; and depending on whether vice-chancellor is also the chairperson of the academic board, the chairperson of the academic board);
- between three and six appointed (Governor in Council) members;
- three to six elected members, with at least one elected member of the academic staff; one elected member of the professional and technical staff; and one elected student member; and
- three to six additional members, two of whom must be graduates of the university.

The Bill also provides that the number of elected members must be equal to or greater than 25% of the total number of members on the council. This aims to ensure the views of staff and students are appropriately represented on the council.

The Bill protects the interests of current members and ensures that student and staff members are always adequately represented on the council as it transitions to a new governance structure. Under the Bill, a resolution cannot end the term of appointment of an existing member of the council. The number of elected members is always 25% of the total board size, even during periods of transition to a new governance structure.

The Bill also includes a range of other minor amendments to the JCU Act to:

- change the terminology in the Act from 'general staff' to 'professional and technical staff';
- allow members to submit their resignation from the council to the chancellor, rather than the vice-chancellor (which recognises the chancellor's role as chair of the council);

- allow the JCU Council to determine the functions of the Academic Board by removing the outdated functions in the Act and providing clear, overarching parameters for the functions of the body; and
- strengthen the provisions for when a council vacancy arises due to the absence of an elected, appointed or additional member by providing that the position becomes vacant when the member is absent for three consecutive meetings without the council's leave.

### **Minor and technical amendments**

The Bill amends the CQU, GU, QUT, UQ, USQ and USC Acts to provide that the deputy chancellor is to act as chancellor when there is a vacancy in the office of chancellor or the chancellor cannot perform the functions of the office, rather than when the chancellor is out of the State.

The Bill amends the UQ Act to extend the maximum term of appointment for the president of UQ's Academic Board from one to three years.

The Bill amends the university Acts to provide that a person is ineligible for appointment to the governing body if the appointment would result in the person being a member of the governing body for more than 12 years, unless the majority of the governing body agree the person may be appointed. This achieves the original policy intent.

## **Alternative ways of achieving policy objectives**

Legislative amendment to the university Acts is the only way of implementing the reforms.

There were a number of ways that the governance reforms for JCU could have been implemented. The reforms proposed in the Bill provide flexibility for JCU with respect to the size and composition of the JCU Council, whilst still ensuring appropriate staff and student representation.

## **Estimated cost for government implementation**

There are no anticipated cost implications for government associated with amending the university Acts.

## **Consistency with fundamental legislative principles**

### **Removal of the ability to make university statutes**

University statutes are a type of subordinate legislation. While not drafted by the Office of the Queensland Parliamentary Counsel, university statutes must be tabled in the Legislative Assembly, may be reviewed by a Parliamentary Committee, and are subject to disallowance procedures. Decisions made under university statutes are subject to judicial review under the *Judicial Review Act 1991* (JR Act).

The Bill (clauses 47, 102, 113, 126, 138, 150, 162) removes the ability for Queensland's public universities to make university statutes. These amendments may be inconsistent with the fundamental legislative principle (FLP) that legislation has sufficient regard to:

- the rights and liberties of individuals (LSA, section 4(2)(a)) - in particular makes rights and liberties, or obligations, dependent on administrative power only if the

power is sufficiently defined and subject to appropriate review (LSA, section 4(3)(a)); and

- the institution of Parliament (LSA, section 4(2)(b)).

The making of university statutes is not mandatory in all cases. As noted above, universities have gradually moved away from making university statutes where possible, and instead are using policies to deal with the matters that must or may be dealt with by statute.

While a person aggrieved by a decision made under a university statute can currently apply to the Supreme Court for judicial review of that decision under the JR Act, this remedy has rarely been used as it is time consuming and expensive. Staff and students are more likely to make a complaint to the university's administration or the Queensland Ombudsman when aggrieved by a decision of a university, whether made under statute, or otherwise. Complaints relating to compliance with the TEQSA Standards may be made to TEQSA. All of these avenues of review remain in place.

Since the passage of the university Acts in 1997 and 1998, there have been a number of reforms in the higher education sector. Higher education is now regulated by the Commonwealth Government through the TEQSA.

To operate as a higher education provider in Australia, universities must demonstrate to TEQSA that they satisfy the minimum national standards of quality prescribed in the *Higher Education Standards Framework (Threshold Standards) 2015*, known as the Threshold Standards. The TEQSA Threshold Standards require universities to provide prospective and current students with certain information, including information about:

- their relationship with the higher education provider including: any contractual arrangements; the obligations of the higher education provider; and the rights and obligations of the student;
- charges, conditions, refunds and costs involved in studying including course-specific costs and tuition assurance arrangements; and
- all matters relating to their studies including: information on admission criteria; recognition of prior learning; and formal recognition of each course of study by professional bodies.

The TEQSA Threshold Standards also require that current and prospective students have access to mechanisms that are capable of resolving grievances about any aspect of their experience with the higher education provider, its agents or related parties.

The proposed amendment ceasing the ability for universities to make university statutes will remove the Queensland Parliament role in the oversight of university statutes. This is considered appropriate given the Commonwealth now regulates the quality standards required to be met by universities through the Threshold Standards, which provide a mechanism to protect the interests of students.

Given the contemporary circumstances in which universities operate, particularly:

- the role of TEQSA;
- that in the most part, the making university statutes is discretionary;
- that universities have in recent times preferred to utilise policies in place of statutes; and
- that more accessible avenues of review are still available to persons aggrieved by decisions of a public university in Queensland,

any potential inconsistency with the stated FLPs is justified and there is no perceivable impact on the rights of staff or students.

*Removal of a requirement for a statute to provide a review process*

Section 59 of the USC Act requires the USC Council to make a statute providing for the review of a decision made under schedule 1, section 9 of the USC Act. Schedule 1, section 9 gives the university the power to demand a payment for the cost of seizing, removing, holding and returning a vehicle that was parked in contravention of a regulatory notice. With the removal of the ability for USC to make university statutes, section 59 will be omitted and there will no longer be a mandatory requirement for USC to have a statute that provides a review mechanism for a decision to demand payment.

All universities have the power to control traffic on the university's land, including the power to seize, remove and hold vehicles and to demand a payment for the costs of the seizure, removal or and holding of vehicles. USC is the only university that has a specific requirement for a statute to provide for review of the decision to demand a payment.

The removal of section 59 could arguably breach the FLP that legislation should makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (LSA, section 4(3)(a)). However, the power to seize, remove and hold a vehicle is necessary to assist universities to manage traffic on university grounds and ensures safe access to university facilities. The power can only be exercised if an authorised person believes on reasonable grounds that the vehicle is parked in contravention of a regulatory notices, or is abandoned; and it is necessary or desirable to seize and remove the vehicle having regard to the safety and convenience of traffic on the university's land and the driver cannot be located or is not willing or able to remove the vehicle.

It is reasonable for a university to seek reimbursement from the vehicle's owner for the cost of seizing, removing, holding and returning a vehicle. A person aggrieved by a university's decision to demand payment for the cost of seizing, removing, holding and returning a vehicle may complain through the university's usual complaints process to the university and to the Queensland Ombudsman. Having regard to the context in which universities may manage traffic on university land and the other avenues for complaint, the removal of the requirement for USC to have statute providing a processes to seek a review of decision to demand payment for the seizing, removing, holding and returning of a vehicle and any potential breach of FLPs is justified. There is also nothing preventing USQ from developing a policy to continue the availability of the right of review of this particular decision.

**Removal of restriction on power of delegation and allowing subdelegation**

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons (*Legislative Standards Act 1992* (LSA), section 4(3)(c)). The appropriateness of a delegation depends on the circumstances including the nature of the power being delegated, its consequences and whether its use appears to require particular expertise or experience. The former Scrutiny of Legislation Committee considered that a power is significant if the power is extensive, may affect the rights or legitimate expectations of others or appears to require particular expertise or experience.

*Power of delegation*

The Bill (clauses 4, 14, 23, 53, 63, 74 and 84) amends the delegation power in the university Acts to remove the limitations on the power of universities to delegate decisions regarding

the expenditure of funds made available to the university by way of bequests, donation or special grant.

A delegate spending funds available to a university by way of bequests, donation or special grant will be subject to: the regulation of a university's financial management under the Threshold Standards (which includes the Australian accounting standards and a requirement to have arrangements for the detection and prevention of fraud and mismanagement); the *Financial Accountability Act 2009* (Qld); and the *Statutory Bodies Financial Arrangements Act 1982* (Qld).

The governing body of each university remains responsible for preparing and adopting the annual budget for the university, which takes into account spending of funds available to the university by way of bequests, donation or special grant. Therefore, the power delegated is not extensive and the amendment to remove the limitation on the power of delegation is appropriate and not in breach of the FLPs.

### Subdelegation

At the request of universities, the Bill (clauses 4, 14, 23, 53, 63, 74 and 84) amends the university Acts to allow a governing body, when delegating its powers to the vice-chancellor, to permit the vice-chancellor to further delegate that power to an appropriately qualified member of the university staff.

This amendment ensures that decisions are made by the people best placed to make the decision. However, the responsibility and accountability for decision-making is maintained within the university's corporate structure, which is ultimately accountable to the governing body.

The capacity for the vice-chancellor to subdelegate a power will not reduce the governing body's responsibility or oversight. The AIA ensures the governing body will remain ultimately responsible for the performance of the delegated and subdelegated powers and functions. It is therefore considered unlikely that the exercise of the power will adversely affect the legitimate expectations of others. Therefore, the proposed amendment to allow for subdelegation is considered appropriate and not considered a breach of FLPs.

### **Offences**

Legislation should have sufficient regard to the rights and liberties of individuals (LSA, section 4(2)(a)). Any new offence must be appropriate and reasonable in light of the conduct that constitutes the offence.

Under the university Acts a person is disqualified from being a member of the governing body if they are disqualified from managing corporations under the Corporations Act, part 2D.6, or have been convicted of an indictable offence. To determine a person's suitability for appointment to a governing body or ongoing membership, the university Acts provide the Minister and the governing body with the power to obtain a person's criminal history information. However, there is no obligation for members of the governing body to disclose changes in circumstances that would mean the person is disqualified.

The Bill (clauses 11, 20, 49, 60, 71 and 81) amends the university Acts to include an obligation on members of a university governing body to give notice to the chancellor, or for appointed members, the Minister, if they are disqualified from managing corporations under

the Corporations Act, or have been convicted of an indictable offence. This obligation is necessary to ensure the integrity of university governing bodies and is a standard requirement imposed on members of statutory bodies within the education and training portfolio.

Under the new provisions, failure to give notice of the disqualification or conviction is an offence with a maximum penalty of 100 penalty units. This is appropriate penalty for failing to comply with this requirement given the important role members of the governing body have in ensuring the appropriate governance of the university.

The Bill ensures appropriate protection and safeguards are in place to deter the unauthorised use and disclosure of information disclosed under this requirement. The new provision requires that if a notice is given about a person's disqualification or change in their criminal history, the notice must be destroyed as soon as practicable after it is no longer required.

Also, the Bill (clauses 11, 20, 49, 60, 71 and 81) inserts a new offence in the university Acts for a person who is, or was, the Minister, a member of the university governing body, a person involved in the administration of the university Act, or a person helping the Minister, council or member to perform a function under the Act, to directly or indirectly disclose another person's protected information other than as provided for under the provision. The maximum penalty for breach of these provisions is 100 penalty units.

This offence is included in the Bill to protect the rights of the person about whom the information relates and provide an important safeguard against the unnecessary disclosure of a person's protected information. The penalty is set at a level to provide the appropriate deterrence and is consistent with the similar offences in legislation establishing statutory bodies in the education and training portfolios. On this basis, the inclusion of the offence in the Bill is considered appropriate and reasonable and not a breach of FLPs.

## **Consultation**

All universities, the National Tertiary Education Union (NTEU) and the National Union of Students (NUS) were provided with a consultation version of the Bill including amendments relating to statutes, delegations, election policy and ensuring the integrity of the membership of the university governing body.

JCU was provided a consultation version of the Bill that included the governance reforms to the JCU Act.

All universities, the NTEU, the NUS and the Together Union were advised of Government's decision to proceed with the JCU governance reforms and that other universities will be invited to consider adoption of the governance reforms following passage of this Bill. The other universities are expected to undertake a rigorous consultation process with relevant stakeholders, including staff and students, prior to government consideration of any further governance reforms.

## **Consistency with legislation of other jurisdictions**

The amendments in the Bill are unique to Queensland. However, the amendments to the JCU governance structure are similar to the approach adopted in the *Universities Governing Bodies Act 2011* (NSW), and are broadly consistent with the 'Universities Australia Voluntary Code of Best Practice – University Governance'.

## Notes on provisions

### Chapter 1 Preliminary

*Clause 1* provides that the short title of the Act is the University Legislation Amendment Act 2017.

*Clause 2* provides that chapter 3 and schedule 1, part 2 of the Bill commences on a day to be fixed by proclamation.

Some amendments to the university Acts commence on assent, and some upon proclamation. Amendments in chapter 2 of the Bill will commence on assent. Amendments in chapter 3 of the Bill will commence on proclamation.

### Chapter 2 Amendments commencing on assent

#### Part 1 Amendment of Central Queensland University Act 1998

*Clause 3* states that this part amends the CQU Act.

*Clause 4* amends the delegation provisions in section 11 of the CQU Act to remove the current limitation on the council delegating its power to approve spending of funds available to the university by way of bequest, donation or special grant. The clause also inserts a new subsection (3) to allow the council to permit the subdelegation of powers delegated to the vice-chancellor by the council.

*Clause 5* amends section 23(2) of the CQU Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 6* inserts a note for section 24(1) of the CQU Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 7* amends section 31 to remove the requirement that the deputy chancellor is to act for the chancellor when the chancellor is absent from the State. Instead, the provision will provide that the deputy chancellor is to act as chancellor during all periods when the chancellor is absent from duty.

*Clause 8* inserts a note for section 32(5) of the CQU Act to refer to the capacity of the vice-chancellor to subdelegate a power delegated to the vice-chancellor by the council.

*Clause 9* inserts a note for section 40C(1) of the CQU Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 10* makes a consequential amendment to section 57 to reflect the removal of section 11(3) relating to the delegation of the power to spend funds available to the university by way of bequest, donation or special grant. The effect of this amendment is that a university statute cannot be made about the spending of funds under a delegation. Note, upon commencement

of section 102, by proclamation, the power for the university to make any statutes will cease.

*Clause 11* inserts new section 62D and 62E into the CQU Act. New section 62D imposes a requirement on members of the council who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that council is aware when a person becomes ineligible to be a member of the council because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 62E provides a protection for a person's criminal history information obtained under section 62B, and the information about a person's disqualification or conviction contained in the notice given under new section 62D. Disclosure of the protected information except as permitted under new section 62E(3) and (4) is an offence with a maximum penalty of 100 penalty units.

Subsection 62E(4) allows disclosure of the protected information to the council, a committee of the council, a member or another person to the extent necessary for the proper performance of the council's functions. This is an important measure for the appropriate governance of the university because, depending on the nature of the conviction or disqualification, the council may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the council may exercise their discretion under section 26 of the Act and restore the member to the council.

*Clause 12* removes the definitions of 'appropriately qualified' and 'indictable offence' from the schedule 2 dictionary. As a result of the removal of the definition of 'appropriately qualified' from the CQU Act, the definition from the AIA will apply. The effect of removing 'indictable offence' from the CQU Act will mean that a person will not be disqualified from being a member of the university council because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

## **Part 2 Amendment of Griffith University Act 1998**

*Clause 13* states that the part amends the GU Act.

*Clause 14* amends the delegation provisions in section 11 of the GU Act to remove the current limitation on the council delegating its power to approve spending of funds available to the university by way of bequest, donation or special grant. The clause also inserts a new subsection (3) to allow the council to permit the subdelegation of powers delegated to the vice-chancellor by the council.

*Clause 15* amends section 23(2) of the GU Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 16* inserts a note for section 24(1) of the GU Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under

the Corporations Act or convicted of an indictable offence.

*Clause 17* amends section 31 of the GU Act to remove the requirement that the deputy chancellor is to act for the chancellor when the chancellor is absent from the State. Instead, the provision will provide that the deputy chancellor is to act as chancellor during all periods when the chancellor is absent from duty.

*Clause 18* inserts a note for section 32(5) of the GU Act to refer to the capacity of the vice-chancellor to subdelegate a power delegated to the vice-chancellor by the council.

*Clause 19* inserts a note for section 32A(1) of the GU Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 20* inserts new section 66D and 66E into the GU Act. New section 66D imposes a requirement on members of the governing body who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that council is aware when a person becomes ineligible to be a member of the council because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 66E provides a protection for a person's criminal history information obtained under section 62B and the information about a person's disqualification or conviction contained in the notice given under new section 66D. Further disclosure of the protected information except as permitted under new section 66E(3) and (4) is an offence with a maximum penalty of 100 penalty units.

New section 66E(4) allows disclosure of the protected information to the council, a committee of the council, a member, or another person to the extent necessary for the proper performance of the council's functions. This is an important measure for the appropriate governance of the university because, depending on the nature of the conviction or disqualification, the council may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the council may exercise their discretion under section 26 of the Act and restore the member to the council.

*Clause 21* removes the definitions of 'appropriately qualified' and 'indictable offence' from the schedule 2 dictionary. As a result of the removal of the definition of 'appropriately qualified' from the GU Act the definition from the AIA will apply. The effect of removing 'indictable offence' from the GU Act will mean that a person will not be disqualified from being a member of the university council because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

### **Part 3 Amendment of James Cook University Act 1997**

*Clause 22* states that the part amends the JCU Act.

*Clause 23* amends the delegation provisions in section 11 of the JCU Act. The clause removes the current limitation on delegation of the council's power to approve spending of

funds available to the university by way of bequest, donation or special grant. The clause replaces the existing reference to university statutes or rules with a reference to an election policy to ensure the making of an election policy is not delegated. The clause also inserts a new subsection (3) to allow the council to permit the subdelegation of powers delegated by the council to the vice-chancellor.

*Clause 24* replaces the heading for part 2, division 3. part 2, division 3 prescribes the membership of the university council in situations where the council has not passed a membership resolution to change its size or structure. New division 3A, introduced in clause 32, provides for membership of the council in situations where council has passed a membership resolution.

*Clause 25* inserts a new section 11A into the JCU Act, providing that part 2, division 3 applies if the council has not made a membership resolution under division 3A, subdivision 2.

*Clause 26* amends section 13 of the JCU Act to provide that the official members are: the chancellor; the vice-chancellor; and if the chairperson of the academic board is not the vice-chancellor - the chairperson. This amendment allows the number of official members to vary depending on who is the chairperson of the academic board.

*Clause 27* amends section 15 of the JCU Act to provide that each elected member is to be elected at a council election. This amendment is consequential to the amendment that inserts new division 3C into the JCU Act, which imposes an obligation on the university to have an election policy and conduct an election in accordance with that policy.

Subsection (1) makes a technical amendment to change the reference in section 15 from 'general' staff to 'professional and technical' staff. The amendment reflects how JCU refers to such staff members in its human resource systems and does not alter the type of staff members included in the class.

*Clause 28* makes a consequential amendment to section 16 of the JCU Act as a result of the change in terminology from 'general' staff to 'professional and technical' staff.

*Clause 29* amends section 17 of the JCU Act to reflect changes to section 13 of the JCU Act allowing the number of official members to fluctuate between two or three depending on whether the vice-chancellor is also the chairperson of the academic board.

*Clause 30* amends section 20A of the JCU Act to reflect that council elections will be held under new division 3C and the change in terminology from 'general' to 'professional and technical' staff.

Subsection (4) makes a technical amendment to the Act. Section 20A provides for the filling of casual vacancies in the office of an elected member and prescribes when an election is required to fill a casual vacancy. Subsection (4) inserts a new subsection (6) into section 20A to clarify that a person appointed under either section 20A(2) or (5) to fill a casual vacancy is taken to be an elected member for the purposes of the JCU Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (5) to fill a vacancy, then the council must hold an election to fill the vacancy under subsection (4), or if the elected member is a student, the council may appoint a student to the office under subsection (5).

*Clause 31* replaces existing section 21 of the JCU Act with a new section to clarify that if a person is not elected for a class of elected members then the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the

existing provision.

*Clause 32* inserts new division 3A into the JCU Act, which provides for the council membership under a membership resolution. The new division includes the following sections.

*Subdivision 1 Preliminary*

New section 22A provides the definitions for the division.

*Subdivision 2 Council membership*

New section 22B provides that subdivision 2 applies if the council passes a membership resolution.

New section 22C provides that under a membership resolution the council consists of official, appointed, elected and additional members.

New section 22D provides that the official members are the chancellor, the vice-chancellor and if the chairperson of the academic board is not the vice-chancellor – the chairperson.

New section 22E provides that the Governor in Council may appoint a person as an appointed member. Consistent with the existing provisions of the JCU Act, an appointed member may be appointed for a term of not more than four years.

New section 22F provides that the elected members of the council consist of members of the academic staff, professional and technical staff (previously ‘general’ staff), and students – each a class of elected member. Consistent with the current provisions relating to elected members, elected staff hold office for a term of four years and elected students hold office for a term of two years.

New section 22G provides for the appointment of additional members. Consistent with the existing provisions of the JCU Act, an additional member is to be appointed for a term of not more than four years and may not be a member of the university staff or a student. Subsection (3) requires that at least two of the additional members must be graduates of the university.

New section 22H provides that sections 22E to 22G apply subject to subdivision 4, which deals with casual vacancies and related matters. This section ensures that despite provisions in sections 22E to 22G dealing with the term of appointment of relevant members, and for elected members – how they are elected, subdivision 4 applies. Subdivision 4 deals with filling casual vacancies in the office of elected or additional members.

New section 22I prescribes when the council is taken to be properly constituted. If a membership resolution has taken effect for each membership class - the Bill provides the council is properly constituted when it has more than half of the total number of members stated in the resolution (new section 22I(1)(a)).

The Bill provides different rules for the constitution of the council while transitioning from one governance structure to another, i.e. in the period from when a membership resolution has passed until it has taken effect for each membership class. If the council is transitioning from a membership structure under a one membership resolution to a new membership structure under a new membership resolution - the council will be properly constituted when it has more than half of the total number of members stated in the previous membership resolution (i.e. the membership resolution that was in effect at the time the new membership resolution was passed).

Note, the transitional provision in new section 83 (inserted by clause 50) provides that when the council is transitioning to a new structure under the first membership resolution, the council will be properly constituted if it has the number of members provided for under section 17 of the JCU Act (as amended by this Bill – clause 29).

Subdivision 3 Membership resolutions

New section 22J enables the university council to pass a membership resolution about the size and composition of the council. The resolution must be passed by a two-thirds majority of the existing council membership and must state:

- the total number of members under a new governance structure;
- the number of official, appointed, elected and additional members; and
- the number of members in each class of elected members (academic, professional and technical and students).

The section requires that the size and composition of the council established under a resolution must have:

- at least eleven and not more than 21 members;
- two or three official members (depending on whether the chairperson of the academic board is the vice-chancellor);
- at least three but not more than six members appointed by the Governor in Council; and
- for elected members - at least three members, or 25% of the total number of members of the council, whichever is the greater, but not more than six.

In relation to elected members, there must be one elected member from each class of elected member and the number of elected staff (i.e. the total number of academic and professional and technical staff) must always be higher than the number of elected students (new section 22J(4)).

The membership resolution must state the day the resolution takes effect for official, elected and additional members (referred to as the effective day). The effective day must be a day when:

- the number of elected members holding office on the council is at least 25% of the total number of members stated in the resolution;
- there are elected members from each class of elected member; and
- the number of elected staff members is greater than the number of elected student members.

New section 22K provides that a resolution cannot end the term of appointment of an existing member.

New section 22L provides that the council must notify the Minister if the council passes a membership resolution that decreases or increases the number of appointed members stated for appointed members in a previous membership resolution. The notice must be given to the Minister at least six months before the earliest day the term of office of a current appointed members ends. This provision ensures the Minister is informed about any change in the number of Governor in Council appointments required and that there is sufficient time for

government to progress the appointments.

Note, new section 22L only applies where a previous membership resolution has been made. Clause 50 inserts a transitional provision providing for notification to the Minister for the first membership resolution, where the number of appointed members is changing.

New section 22M prescribes when a membership resolution takes effect. A membership resolution takes effect for official, elected and additional members on the effective day for the class. The membership resolution will take effect for appointed members when the terms of office of existing appointed members have ended and the number of members appointed by the Governor in Council is the number stated in the membership resolution.

New section 22N ensures stability in council membership by providing that a council may not pass a further membership resolution if a current membership resolution has not taken effect for each membership class.

#### Subdivision 4 Casual vacancies and related matters

New section 22O provides for the filling of casual vacancies in the office of an elected member. This new section reflects current section 20A of the JCU Act, with an additional power for the council to appoint a person to fill a casual vacancy, rather than holding an election, if the vacancy arises after a membership resolution has been passed but before it has taken effect for the class. This amendment ensures the appropriate number of elected members continue to be represented on the council while minimising the compliance burden on the council of conducting an election process during a period of transition to a new governance structure.

New section 22P provides that the Minister may appoint a person as an elected member if a membership resolution has been passed and insufficient persons have been properly elected to comply with the resolution. This provision replicates the process under the existing section 21 of the JCU Act.

New section 22Q replicates existing section 22 of the JCU Act and provides for the term of appointment for a person appointed to fill a casual vacancy.

#### Division 3B Matters relating to offices of appointed, elected and additional members

Division 3B covers matters relating to ineligibility for membership and vacation of office.

*Clause 33* amends section 23(2) of the JCU Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 34* amends section 24 of the JCU Act to clarify when the office of an elected or additional member becomes vacant. The office of the elected person becomes vacant when the person ceases to be an eligible person for the class of elected member. In addition, if the election policy includes nomination requirements for elected members - the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

The clause also makes the test about when a vacancy in the office of a member more objective by providing that a vacancy arises in the office of a member if the member is absent

without leave for three consecutive meetings.

The clause also inserts a note for section 24(1) of the JCU Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 35* inserts new division 3C which provides for council elections.

*Division 3C Council elections*

New section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the election policy.

New section 26AB provides that council elections must be held under the election policy.

New section 26AC proscribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 36* amends section 26B of the JCU Act to provide that the council may remove a member from office if two-thirds of its members are satisfied the member has not complied with the member's functions and obligations, or a conduct obligation. Removing reference to a fixed number (15) of members and replacing it with a proportional reference (two-thirds) is required as a result of the amendments that will allow the council to set the size and composition of the governing body by a membership resolution.

*Clause 37* amends section 26C of the JCU Act to provide that the Minister may not extend the term of appointment of a member if the council has passed a membership resolution and the resolution has not taken effect for each membership class.

*Clause 38* makes a technical amendment to section 30 of the JCU Act to reflect changes in terminology from 'general' to 'professional and technical' staff. Instead of referring to each class, the section will now simply refer to the university's staff.

*Clause 39* amends section 31 of the JCU Act to modernise the drafting of the provision and include the requirement that the deputy chancellor is to act as chancellor during all periods when the chancellor is absent from duty.

*Clause 40* inserts a note in section 32(5) of the JCU Act to refer to the new section 11(3) allowing the council to permit the subdelegation by the vice-chancellor of a power delegated to the vice-chancellor by the council.

*Clause 41* amends section 33 of the JCU Act to reflect the removal of the power to make statutes (see clause 47).

*Clause 42* omits part 4, division 3 of the JCU Act to remove the ability for the university to establish colleges by university statute.

*Clause 43* amends section 40 of the JCU Act to allow the council to determine the functions of the academic board by removing the outdated functions in the Act and providing clear, overarching parameters for the functions.

*Clause 44* makes a consequential amendment to section 40B of the JCU Act as a result of the removal of the ability to establish colleges by university statute.

*Clause 45* inserts a note for section 40C to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 46* amends section 40D of the JCU Act to provide that the council may remove the chancellor, vice-chancellor or chairperson (i.e. an official member) from office if two-thirds of its members are satisfied the official member has not complied with a the member's functions and obligations, or a conduct obligation. The amendment removes reference to a fixed number of members (15) and replaces it with a proportional reference (two-thirds). This amendment is required as a result of the amendments that will allow the council to set the size and composition of the governing body by a membership resolution.

*Clause 47* omits part 6 of the JCU Act to remove the ability for the council to make university statutes.

*Clause 48* makes a consequential amendment to section 62B of the JCU Act to reflect that if the council makes a membership resolution, the appointed members are appointed under new section 22E. The amendment maintains the policy intent of the existing section.

*Clause 49* inserts new section 62D and 62E into the JCU Act. New section 62D imposes a requirement on members of the council who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that council is aware when a person becomes ineligible to be a member of the council because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 62E provides a protection for a person's criminal history information obtained under section 62B, and the information about a person's disqualification or conviction contained in the notice given under new section 62D. Disclosure of the protected information except as permitted under new section 62E(3) and (4) is an offence with a maximum penalty of 100 penalty units. This is a standard legislative safeguard to protect an individual's criminal history information.

Section 62E(4) allows disclosure of the protected information to the council, a committee of the council, a member or another person to the extent necessary for the proper performance of the council's functions. This is an important measure for the appropriate governance of the university because depending on the nature of the conviction or disqualification, the council may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the council may exercise their discretion under section 26 of the Act to restore the member to the council.

*Clause 50* provides for the transitional arrangements under a new part 8, division 3 of the JCU Act. The transitional provisions:

- provide that a reference to a 'council election' in the JCU Act, as amended by the Bill, includes a reference to a ballot under previous section 15(3) (new section 80);
- provide that the first membership resolution must be passed by at least two-thirds of the number of members provided for under current sections 13 to 16 of the JCU Act (new section 81);
- provide that after passing the first membership resolution, the council must give the Minister a notice six months before the earliest end day for an appointed member

advising of the number of appointed members in the resolution (new section 82);

- provide for membership and constitution of the council during the period starting when the first membership resolution is passed and ending when it has taken effect for each membership class – the transition period (new section 83);
- provide that members of the convocation must be disregarded when calculating the number of elected members for new section 22J during the transition period (new section 84);
- provide for dealing with casual vacancies in the office of a convocation elected member when the vacancy exists at the start of, or arises during, the transition period (new section 85); and
- clarify that, upon commencement, any university statute made under the omitted section 57 is repealed (new section 86).

*Clause 51* removes the definitions of ‘appropriately qualified’ and ‘indictable offence’ from the schedule 2 dictionary. As a result of the removal of the definition of ‘appropriately qualified’ from the JCU Act, the definition from the AIA will apply. The effect of removing ‘indictable offence’ from the JCU Act will mean that a person will not be disqualified from being a member of the university council because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

## **Part 4 Amendment of the Queensland University of Technology Act 1998**

*Clause 52* states that the part amends the QUT Act.

*Clause 53* amends the delegation provisions in section 11 of the QUT Act to remove the current limitation on the council delegating its power to approve spending of funds available to the university by way of bequest, donation or special grant. The clause also inserts a new subsection (3) to allow the council to permit the subdelegation of powers delegated to the vice-chancellor by the council.

*Clause 54* amends section 23(2) of the QUT Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person’s election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 55* inserts a note for section 24(1) of the QUT Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 56* amends section 31 of the QUT Act to remove the requirement that the deputy chancellor is to act for the chancellor when the chancellor is absent from the State. Instead, the provision will provide that the deputy chancellor is to act as chancellor during all periods when the chancellor is absent from duty.

*Clause 57* inserts a note for section 32(5) of the QUT Act to refer to the capacity of the vice-chancellor to subdelegate a power delegated to the vice-chancellor by the council.

*Clause 58* inserts a note for section 39B(1) of the QUT Act to refer to the new requirement

for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 59* makes a consequential amendment to section 56 of the QUT Act to reflect the removal of section 11(3) relating to the delegation of the power to spend funds available to the university by way of bequest, donation or special grant. The effect of this amendment is that a university statute cannot be made about the spending of funds under a delegation. Note, upon commencement of section 126, by proclamation, the power for the university to make any statutes will cease.

*Clause 60* inserts new section 61D and 61E into the QUT Act. New section 61D imposes a requirement on members of the council who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that council is aware when a person becomes ineligible to be a member of the council because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 61E provides a protection for a person's criminal history information obtained under section 61B and the information about a person's disqualification or conviction contained in the notice given under new section 61D. Further disclosure of the protected information except as permitted under new section 61E(3) and (4) is an offence with a maximum penalty of 100 penalty units.

Section 61E(4) allows disclosure of the protected information to the council, a committee of the council, a member, or another person to the extent necessary for the proper performance of the council's functions. This is an important measure for the appropriate governance of the university because, depending on the nature of the conviction or disqualification, the council may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the council may exercise their discretion under section 26 of the Act and restore the member to the council.

*Clause 61* removes the definitions of 'appropriately qualified' and 'indictable offence' from the schedule 2 dictionary. As a result of the removal of the definition of 'appropriately qualified' from the QUT Act, the definition from the AIA will apply. The effect of removing 'indictable offence' from the QUT Act will mean that a person will not be disqualified from being a member of the university council because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

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

*Clause 62* states that the part amends the UQ Act.

*Clause 63* amends the delegation provisions in section 11 of the UQ Act to remove the current limitation on the senate delegating its power to approve spending of funds available to the university by way of bequest, donation or special grant. The clause also inserts a new subsection (3) to allow the senate to permit the subdelegation of powers delegated to the vice-chancellor by the senate.

*Clause 64* amends section 23(2) of the UQ Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 65* inserts a note for section 24(1) of the UQ Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 66* amends section 31 of the UQ Act to remove the requirement that the deputy chancellor is to act for the chancellor when the chancellor is absent from the State. Instead, the provision will provide that the deputy chancellor is to act as chancellor during all periods when the chancellor is absent from duty.

*Clause 67* inserts a note for section 32(5) of the UQ Act to refer to the capacity of the vice-chancellor to subdelegate a power delegated to the vice-chancellor by the senate.

*Clause 68* amends section 35A of the UQ Act to provide that the president of the academic board may be appointed for a term of up to three years.

*Clause 69* inserts a note for section 35C of the UQ Act to refer to the new requirement for members of the senate to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 70* makes a consequential amendment to 52 of the UQ Act to reflect the removal of section 11(3) relating to the delegation of the power to spend funds available to the university by way of bequest, donation or special grant. The effect of this amendment is that a university statute cannot be made about the spending of funds under a delegation. Note, upon commencement of section 138, by proclamation, the power for the university to make any statutes will cease.

*Clause 71* inserts new section 56D and 56E into the UQ Act. New section 56D imposes a requirement on members of the senate who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that the senate is aware when a person becomes ineligible to be a member of the senate because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 56E provides a protection for a person's criminal history information obtained under section 56B and the information about a person's disqualification or conviction contained in the notice given under new section 56D. Further disclosure of the protected information except as permitted under new section 56E(3) and (4) is an offence with a maximum penalty of 100 penalty units.

Section 56E(4) allows disclosure of the protected information to the senate, a committee of the senate, a member or another person to the extent necessary for the proper performance of the senate's functions. This is an important measure for the appropriate governance of the university because depending on the nature of the conviction or disqualification, the senate

may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the senate may exercise their discretion under section 26 of the Act to restore the member to the senate.

*Clause 72* removes the definitions of ‘appropriately qualified’ and ‘indictable offence’ from the schedule 2 dictionary. As a result of the removal of the definition of ‘appropriately qualified’ from the UQ Act the definition from the AIA will apply. The effect of removing ‘indictable offence’ from the UQ Act will mean that a person will not be disqualified from being a member of the senate because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

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

*Clause 73* states that the part amends the USQ Act.

*Clause 74* amends the delegation provisions in section 11 of the USQ Act to remove the current limitation on the university’s council delegating its power to approve spending of funds available to the university by way of bequest, donation or special grant. The clause also inserts a new subsection (3) to allow the council to permit the subdelegation of powers delegated to the vice-chancellor by the council.

*Clause 75* amends section 23(2) of the USQ Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person’s election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 76* inserts a note for section 24(1) of the USQ Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 77* amends section 31 of the USQ Act to remove the requirement that the deputy chancellor is to act for the chancellor when the chancellor is absent from the State. Instead, the provision will provide that the deputy chancellor is to act as chancellor during all periods when the chancellor is absent from duty.

*Clause 78* inserts a note for section 32(5) of the USQ Act to refer to the capacity of the vice-chancellor to subdelegate a power delegated to the vice-chancellor by the council.

*Clause 79* inserts a note for section 39C(1) of the USQ Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 80* makes a consequential amendment to section 56 of the USQ Act to reflect the removal of section 11(3) relating to the delegation of the power to spend funds available to the university by way of bequest, donation or special grant. The effect of this amendment is that a university statute cannot be made about the spending of funds under a delegation. Note, upon commencement, by proclamation of section 150, the power for the university to make any statutes will cease.

*Clause 81* inserts new section 61D and 61E into the USQ Act. New section 61D imposes a requirement on members of the council who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the

disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that council is aware when a person becomes ineligible to be a member of the council because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 61E provides a protection for a person's criminal history information obtained under section 61B and the information about a person's disqualification or conviction contained in the notice given under new section 61D. Disclosure of the protected information except as permitted under new section 61E(3) and (4) is an offence with a maximum penalty of 100 penalty units.

Section 61E(4) allows disclosure of the protected information to the council, a committee of the council, a member or another person to the extent necessary for the proper performance of the council's functions. This is an important measure for the appropriate governance of the university because depending on the nature of the conviction or disqualification, the council may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the council may exercise their discretion under section 26 of the Act and restore the members to the council.

*Clause 82* removes the definition of 'appropriately qualified' and 'indictable offence' from the schedule 2 dictionary. As a result of the removal of the definition of 'appropriately qualified' from the USQ Act the definition from the AIA will apply. The effect of removing 'indictable offence' from the USQ Act will mean that a person will not be disqualified from being a member of the university council because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

## **Part 7 Amendment of University of the Sunshine Coast Act 1998**

*Clause 83* states that the part amends the USC Act.

*Clause 84* amends the delegation provisions in section 11 of the USC Act to remove the current limitation on the council delegating its power to approve spending of funds available to the university by way of bequest, donation or special grant. The clause also inserts a new subsection (3) to allow the council to permit the subdelegation of powers delegated to the vice-chancellor by the council.

*Clause 85* amends section 23(2) of the USC Act to clarify that a person is ineligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment would result in the person being a member for more than 12 years. This amendment clarifies the policy intent that a person should be able to serve a full 12 years, for example, three full four year terms, before agreement of the majority of members is required.

*Clause 86* inserts a note for section 24(1) of the USC Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 87* amends section 31 of the USC Act to remove the requirement that the deputy chancellor is to act for the chancellor when the chancellor is absent from the State. Instead, the provision will provide that the deputy chancellor is to act as chancellor during all periods

when the chancellor is absent from duty.

*Clause 88* inserts a note for section 32(5) of the USC Act to refer to the capacity of the vice-chancellor to subdelegate a power delegated to the vice-chancellor by the council.

*Clause 89* inserts a note for section 40C(1) of the USC Act to refer to the new requirement for members of the council to disclose if they are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence.

*Clause 90* makes a consequential amendment to section 58 of the USC Act to reflect the removal of section 11(3) relating to the delegation of the power to spend funds available to the university by way of bequest, donation or special grant. The effect of this amendment is that a university statute cannot be made about the spending of funds under a delegation. Note, upon commencement, by proclamation of section 162, the power for the university to make any statutes will cease.

*Clause 91* inserts new sections 64D and 64E into the USC Act. New section 64D imposes a requirement on members of the council who are disqualified from managing corporations under the Corporations Act or convicted of an indictable offence to give notice of the disqualification or conviction to the chancellor or, for members appointed by the Governor in Council, the Minister. This amendment ensures that council is aware when a person becomes ineligible to be a member of the council because of the disqualification or conviction. Failing to comply with the requirement to give notice is an offence with a maximum penalty of 100 penalty units.

Under the new section the notice of the disqualification or conviction must be destroyed as soon as practicable after it is no longer needed for the purposes of the Act.

New section 64E provides a protection for a person's criminal history information obtained under section 64B and the information about a person's disqualification or conviction contained in the notice given under new section 64D. Disclosure of the protected information except as permitted under new section 64E(3) and (4) is an offence with a maximum penalty of 100 penalty units.

Section 64E(4) allows disclosure of the protected information to the council, a committee of the council, a member or another person to the extent necessary for the proper performance of the council's functions. This is an important measure for the appropriate governance of the university because depending on the nature of the conviction or disqualification, the council may need to consider whether there is any risk to the university. In addition, if a member is convicted of an indictable offence, the council may exercise their discretion under section 26 of the Act and restore the members to the council.

*Clause 92* removes the definitions of 'appropriately qualified' and 'indictable offence' from the schedule 2 dictionary. As a result of the removal of the definition of 'appropriately qualified' from the USC Act the definition from the AIA will apply. The effect of removing 'indictable offence' from the USC Act will mean that a person will not be disqualified from being a member of the university council because of a conviction of an indictable offence heard summarily. Section 659 of the *Criminal Code* provides that an indictable offence does not include an indictable offence dealt with summarily.

## Chapter 3 Amendments commencing by proclamation

### Part 1 Amendment of Central Queensland University Act 1998

*Clause 93* states that the part amends the CQU Act.

*Clause 94* amends section 11 of the CQU Act to replace the existing reference to university statutes or rules with a reference to an election policy. This amendment is consequential to the removal of the power to make university statutes and rules and the introduction of the new requirement for universities to have an elections policy. The amendment will ensure the making of an election policy is not delegated.

*Clause 95* amends section 15 of the CQU Act to provide that each elected member is to be elected at a council election. This amendment is consequential to the amendment that inserts new division 3A into the CQU Act, which imposes an obligation on the university to have an election policy and conduct elections in accordance with that policy.

*Clause 96* makes consequential amendments to section 20A of the CQU Act to reflect that council elections will be held under new division 3A.

Subsection (4) makes a technical amendment to the Act. Section 20A provides for the filling of casual vacancies in the office of an elected member and prescribes when an election is required to fill a casual vacancy. Subsection (4) inserts a new subsection (6) into section 20A to clarify that a person appointed under either section 20A (2) or (5) to fill a casual vacancy in the office of an elected member is taken to be an elected member for the purposes of the CQU Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (5) to fill a vacancy, then the council must either hold an election to fill the vacancy under subsection (4), or if the elected member is a student the council may appoint a student to the office under subsection (5).

*Clause 97* replaces existing section 21 of the CQU Act with a new section to clarify that if a person is not elected for a class of elected members then the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the existing provision.

*Clause 98* amends section 24 of the CQU Act to clarify when the office of an elected or additional member becomes vacant. The office of the elected member becomes vacant when the person ceases to be an eligible person for the class. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. In addition, if the election policy includes nomination requirements for elected members - the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

*Clause 99* inserts new division 3A into the CQU Act to provide for council elections.

#### Division 3A Council elections

New Section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the election policy.

New section 26AB provides that council elections must be held under the election policy.

New section 26AC prescribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 100* removes the ability for the university to establish colleges by university statute.

*Clause 101* makes a consequential amendment to section 40B of the CQU Act to remove the reference to a college.

*Clause 102* removes the ability for the council to make university statutes.

*Clause 103* provides for the transitional arrangements. The transitional provisions:

- provide that a reference in the CQU Act, as amended by the Bill, to a council election includes a reference to a ballot under the previous section 15(3); and
- clarify that, upon commencement, any university statute made under the omitted section 57 is repealed.

*Clause 104* amends the schedule 2 dictionary.

## **Part 2 Amendment of Griffith University Act 1998**

*Clause 105* states that the part amends the GU Act.

*Clause 106* amends section 11 of the GU Act to replace the existing reference to university statutes or rules with a reference to an election policy. This amendment is consequential to the removal of the power to make university statutes and rules and the introduction of the new requirement for universities to have an elections policy. The amendment will ensure the making of an election policy is not delegated.

*Clause 107* amends section 15 of the GU Act to provide that each elected member is to be elected at a council election. This amendment is consequential to the amendment that inserts new division 3A into the GU Act, which imposes an obligation on the university to have an election policy and conduct an election in accordance with that policy.

*Clause 108* makes consequential amendments to section 20A of the GU Act to reflect that council elections will be held under new division 3A.

Subsection (5) makes a technical amendment to the Act. Section 20A provides for the filling of casual vacancies in the office of an elected member and prescribes when an election is required to fill a casual vacancy. Subsection (5) inserts a new subsection (5) into section 20A of the GU Act to clarify that a person appointed under either section 20A (2) or (4) to fill a casual vacancy in the office of an elected member is taken to be an elected member for the purposes of the Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (4) to fill a vacancy, then the council must appoint to the office a person who is eligible to be elected to the office.

*Clause 109* replaces existing section 21 of the GU Act with a new section to clarify that if a person is not elected for a class of elected members, the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the existing provision.

*Clause 110* amends section 24 of the GU Act to clarify when the office of an elected or additional member becomes vacant. The office of the elected member becomes vacant when

the person ceases to be an eligible person for the class. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. In addition, if the election policy includes nomination requirements for elected members - the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. - The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

*Clause 111* inserts new division 3A which provides for council elections.

*Division 3A Council elections*

New Section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the election policy.

New section 26AB provides that council elections must be held under the elections policy.

New section 26AC prescribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 112* makes a consequential amendments to section 33 of the GU Act to remove reference to university statutes.

*Clause 113* removes the ability for the council to make university statutes.

*Clause 114* provides for the transitional arrangements. The transitional provisions:

- provide that a reference in the GU Act, as amended by the Bill, to a council election includes a reference to a ballot under the previous section 15(3); and
- clarify that, upon commencement, any university statute made under the omitted section 57 is repealed.

*Clause 115* amends the schedule 2 dictionary.

### **Part 3 Amendment of Queensland University of Technology Act 1998**

*Clause 116* states that the part amends the QUT Act.

*Clause 117* amends section 11 of the QUT Act to replace the existing reference to university statutes or rules with a reference to an election policy. This amendment is consequential to the removal of the power to make university statutes and rules and the introduction of the new requirement for universities to have an elections policy. The amendment will ensure the making of an election policy is not delegated.

*Clause 118* amends section 15 of the QUT Act to provide that each elected member is to be elected at a council election. This amendment is consequential to the amendment that inserts new division 3A into the QUT Act, which imposes an obligation on the council to have an election policy and conduct an election in accordance with that policy.

*Clause 119* makes consequential amendments to section 20A of the QUT Act to reflect that council elections will be held under new division 3A.

Subsection 4 makes a technical amendment to the Act. Section 20A provides for the filling of casual vacancies in the office of an elected member and prescribes when an election is required to fill a casual vacancy. Subsection (4) inserts a new subsection (6) into section 20A to clarify that a person appointed under either section 20A (2) or (5) to fill a casual vacancy

in the office of an elected member is taken to be an elected member for the purposes of the Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (5) to fill a vacancy, then the council must either hold an election to fill the vacancy under subsection (4), or if the elected member is a student or a member of the Alumni the council may appoint a student or member of the alumni to the office under subsection (5).

*Clause 120* replaces existing section 21 of the QUT Act with a new section to clarify that if a person is not elected for a class of elected members, the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the existing provision.

*Clause 121* amends section 24 of the QUT Act to clarify when the office of an elected or additional member becomes vacant. The office of an elected member becomes vacant when the person ceases to be an eligible person for the class. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. In addition, if the election policy includes nomination requirements for elected members - the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

*Clause 122* inserts new division 3A which provides for council elections.

#### *Division 3A Council elections*

New Section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the election policy.

New section 26AB provides that council elections must be held under the elections policy. New section 26AC prescribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 123* makes a consequential amendment to section 33 of the QUT Act to reflect the removal of the power to make university statutes.

*Clause 124* removes the ability for the council to establish colleges by university statute.

*Clause 125* makes a consequential amendment to section 39A to remove the reference to a college.

*Clause 126* removes the ability for the council to make university statutes.

*Clause 127* provides for the transitional arrangements. The transitional provisions:

- provide that a reference in the QUT Act, as amended by the Bill, to a council election includes a reference to a ballot under the previous section 15(3); and
- clarify that, upon commencement, any university statute made under the omitted section 57 is repealed.

*Clause 128* amends the schedule 2 dictionary.

## **Part 4 Amendment of University of Queensland Act 1998**

*Clause 129* states that the part amends the UQ Act.

*Clause 130* amends section 11 of the UQ Act to replace the existing reference to university

statutes or rules with a reference to an election policy. This amendment is consequential to the removal of the power to make university statutes and rules and the introduction of the new requirement for universities to have an elections policy. The amendment will ensure the making of an election policy is not delegated.

*Clause 131* amends section 15 of the UQ Act to provide that each elected member is to be elected at a senate election. This amendment is consequential to the amendment that inserts new division 3A into the UQ Act, which imposes an obligation on the senate to have an election policy and conduct an election in accordance with that policy.

*Clause 132* makes consequential amendments to section 20A of the UQ Act to reflect that senate elections will be held under new division 3A.

Subsection (4) makes a technical amendment to the Act. Section 20A of the UQ Act provides for the filling of casual vacancies in the office of an elected member.

Subsection (5) inserts a new subsection (5) into section 20A of the UQ Act to clarify that a person appointed under either section 20A (2) or (4) to fill a casual vacancy in the office of an elected member is taken to be an elected member for the purposes of the Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (4) then the senate must appoint to the office a person who is eligible to be elected to the office.

*Clause 133* replaces existing section 21 of the UQ Act with a new section to clarify that if a person is not elected for a class of elected members then the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the existing provision.

*Clause 134* amends section 24 of the UQ Act to clarify when the office of an elected or additional member becomes vacant. The office of the elected member becomes vacant when the person ceases to be an eligible person for the class. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. In addition, if the election policy includes nomination requirements for elected members - the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

*Clause 135* inserts new division 3A providing for senate elections.

#### *Division 3A Council elections*

New section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the election policy.

New section 26AB provides that council elections must be held under the election policy.

New section 26AC prescribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 136* removes the ability for the university to establish colleges by university statute.

*Clause 137* makes a consequential amendment to section 35B of the UQ Act to remove the reference to a college.

*Clause 138* removes the ability for the council to make university statutes.

*Clause 139* provides for the transitional arrangements. The transitional provisions:

- provide that a reference in the UQ Act, as amended by the Bill, to a council election includes a reference to a ballot under the previous section 15(3); and
- clarify that, upon commencement, any university statute made under the omitted section 52 is repealed.

*Clause 140* amends the schedule 2 dictionary.

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

*Clause 141* states that the part amends the USQ Act.

*Clause 142* amends section 11 of the USQ Act to replace the existing reference to university statutes or rules with a reference to an election policy. This amendment is consequential to the removal of the power to make university statutes and rules and the introduction of the new requirement for universities to have an elections policy. The amendment will ensure the making of an election policy is not delegated.

*Clause 143* amends section 15 of the USQ Act to provide that each elected member is to be elected at a council election. This amendment is consequential to the amendment that inserts new division 3A into the USQ Act, which imposes an obligation on the university to have an election policy and conduct an election in accordance with that policy.

*Clause 144* makes consequential amendments to section 20A of the USQ Act to reflect that council elections will be held under new division 3A.

Subsection (4) makes a technical amendment to the Act. Section 20A of the USQ Act provides for the filling of casual vacancies in the office of an elected member and prescribes when an election is required to fill a casual vacancy. Subsection (4) inserts a new subsection (6) into section 20A to clarify that a person appointed under either section 20A (2) or (5) to fill a casual vacancy in the office of an elected member is taken to be an elected member for the purposes of the Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (5) to fill a vacancy, then the council must either hold an election to fill the vacancy under subsection (4), or if the elected member is a student the council may appoint a student to the office under subsection (5).

*Clause 145* replaces existing section 21 of the USQ Act with a new section to clarify that if a person is not elected for a class of elected members, the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the existing provision.

*Clause 146* amends section 24 of the USQ Act to clarify when the office of an elected or additional member becomes vacant. The office of the elected member becomes vacant when the person ceases to be an eligible person for the class. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. In addition, if the election policy includes nomination requirements for elected members then the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

*Clause 147* inserts new division 3A, which provides for council elections.

### Division 3A Council elections

New section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the elections policy.

New section 26AB provides that council elections must be held under the elections policy.

New section 26AC prescribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 148* removes the ability for the university to establish colleges by university statute.

*Clause 149* makes a consequential amendment to section 39B of the USQ Act to remove the reference to a college.

*Clause 150* removes the ability for the council to make university statutes.

*Clause 151* provides for the transitional arrangements. The transitional provisions:

- provide that a reference in the USQ Act, as amended by the Bill, to a council election includes a reference to a ballot under the previous section 15(3); and
- clarify that, upon commencement, any university statute made under the omitted section 56 is repealed.

*Clause 152* amends the schedule 2 dictionary.

## **Part 6 Amendment of University of the Sunshine Coast Act 1998**

*Clause 153* states that the part amends the USC Act.

*Clause 154* amends section 11 of the USC Act to replace the existing reference to university statutes or rules with a reference to an election policy. This amendment is consequential to the removal of the power to make university statutes and rules and the introduction of the new requirement for universities to have an elections policy. The amendment will ensure the making of an election policy is not delegated.

*Clause 155* amends section 15 of the USC Act to provide that each elected member is to be elected at a council election. This amendment is consequential to the amendment that inserts new division 3A into the USC Act, which imposes an obligation on the university to have an election policy and conduct an election in accordance with that policy.

*Clause 156* makes consequential amendments to section 20A of the USC Act to reflect that council elections will be held under new division 3A.

Subsection (4) makes a technical amendment to the Act. Section 20A of the USC Act provides for the filling of casual vacancies in the office of an elected member and prescribes when an election is required to fill a casual vacancy. Subsection (4) inserts a new subsection (6) into section 20A of the USC Act to clarify that a person appointed under either section 20A (2) or (5) to fill a casual vacancy in the office of an elected member is taken to be an elected member for the purposes of the Act, except for the operation of subsections (2) and (3)(a). This means that if a casual vacancy arises in the office of an elected member who was appointed under subsection (2) or (5) to fill a vacancy, then the council must either hold an election to fill the vacancy under subsection (4), or if the elected member is a student the council may appoint a student to the office under subsection (5).

*Clause 157* replaces existing section 21 of the USC Act with a new section to clarify that if a

person is not elected for a class of elected members, the Minister may appoint a person as the elected member for the relevant class. The new section maintains the policy intent of the existing provision.

*Clause 158* amends section 24 of the USC Act to clarify when the office of an elected or additional member becomes vacant. The office of the elected member becomes vacant when the person ceases to be an eligible person for the class. The Bill inserts a definition of eligible person for each class of elected members through amendments to the schedule 2 dictionary. In addition, if the election policy includes nomination requirements for elected members then the office of an elected member becomes vacant if the person ceases to meet the nomination requirements. The office of an additional member becomes vacant if the member becomes a student or a member of the university staff.

*Clause 159* inserts new division 3A, which provides for council elections.

#### *Division 3A Council elections*

New section 26AA provides that the council must make and publish on the university website a policy about the conduct of elections for elected members and prescribes what must be included in the elections policy.

New section 26AB provides that council elections must be held under the election policy.

New section 26AC prescribes who is eligible to vote in an election. The section recognises that an election policy may include requirements about eligibility to vote.

*Clause 160* removes the ability for the university to establish colleges by university statute.

*Clause 161* makes a consequential amendment to section 40B to remove the reference to a college.

*Clause 162* removes the ability for the council to make university statutes.

*Clause 163* provides for the transitional arrangements. The transitional provisions:

- provide that a reference in the USC Act, as amended by the Bill, to a council election includes a reference to a ballot under the previous section 15(3);
- clarify that, upon commencement, any university statute made under the omitted section 58 is repealed; and
- provide that if an application for a review under the statute made under repealed section 59 of the USC Act remains on foot, it is to continue to be heard and dealt with under the repealed statute.

*Clause 164* amends the schedule 2 dictionary.

## **Chapter 4 Consequential amendments**

*Clause 165* provides that schedule 1 amends the Acts mentioned in it. Schedule 1 makes consequential amendments to university Acts to amend section references affected by the amendments in the Bill.