

Western Australia

Edith Cowan University Act 1984

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Edith Cowan University Act 1984

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Western Australia

Edith Cowan University Act 1984

An Act to establish and incorporate the Edith Cowan University and for incidental and other purposes.

[Long title inserted by No. 63 of 1990 s. 4.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Edith Cowan University Act 1984*¹.
[Section 1 amended by No. 63 of 1990 s. 19.]

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Interpretation

(1) In this Act unless the contrary intention appears —

“**Academic Board**” means the Board established in accordance with section 18;

“**Academy**” means the Western Australian Academy of Performing Arts referred to in section 24;

“**Alumni**” means graduates of —

- (a) the University;
- (b) a constituent college or a college referred to in section 47 of the Colleges Act; or
- (c) a college established and maintained by the Minister at Churchlands, Claremont, Graylands, Mount Lawley or Nedlands under section 10 of the *Education Act 1928*² as in force immediately before the appointed day as defined in section 4 of the *Teacher Education Act 1972*³;

“**Board of the Academy**” means the Board of Management of the Academy;

“**Chancellor**” means the Chancellor of the University;

“**chief executive officer**” means the person holding or acting in the office of chief executive officer of the University under section 30;

- “Colleges Act”** means the *Colleges Act 1978* ⁴;
- “commencement date”** means the date on which this Act comes into operation ¹;
- “Council”** means the Council of the University;
- “enrolled student”** means a student enrolled in the University;
- “examination”** means an examination conducted by the University and includes an examination conducted by any other person or body prescribed by the Statutes as a person or body authorised to conduct examinations for the University;
- “member”** means a member of the Council;
- “member of the staff”** means the chief executive officer, a member of the academic or other staff, an officer or employee of the University;
- “prescribed”** means prescribed by this Act, by a by-law made under this Act, by a Statute or by a by-law or rule made under a Statute;
- “Statute”** means a Statute of the University in force in pursuance of this Act;
- “Student Guild”** means the Edith Cowan University Student Guild referred to in section 41;
- “University”** means the Edith Cowan University referred to in this Act.
- (2) Any question arising as to whether a person is or is not a member of the academic staff, or a member of the salaried staff, or an officer or employee of the University shall be determined by the Council and the decision of the Council is final.
- (3) Any question arising as to whether a person —
- (a) is a member of the staff at the Academy or at a particular campus of the University; or

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(b) is an enrolled student at the Academy or at a particular campus of the University,

shall be determined by the Council and the decision of the Council is final.

[Section 3 amended by No. 77 of 1985 s. 11; No. 48 of 1989 s. 21; No. 63 of 1990 s. 5 and 19.]

Part II — The Edith Cowan University

[Heading amended by No. 63 of 1990 s. 19.]

4. Establishment

- (1) On and after the day on which the *Western Australian College of Advanced Education Amendment Act 1990*¹ comes into operation (in this section referred to as “**the commencement day**”) the body corporate, consisting of the Council, the members of the staff and the enrolled students, that was continued in existence under this Act as if on the coming into operation of this Act it had been established under this Act by the name of the “Western Australian College of Advanced Education” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act to be called the “Edith Cowan University”, but so that the corporate identity of the body corporate and its rights and obligations are not affected by the change in name.
- (2) A reference to the Western Australian College of Advanced Education, whether by use of that name or a similar or abbreviated form of that name —
- (a) in a written law passed or made before the commencement day;
 - (b) in any document or other instrument made, executed, entered into or done before the commencement day; or
 - (c) made before the commencement day in any other manner,

shall be construed as if it had been amended to be a reference to the Edith Cowan University, unless because of the context it would be inappropriate to construe the reference in that manner.

[Section 4 inserted by No. 63 of 1990 s. 6.]

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5. Constitution and powers

- (1) Subject to this Act, the University shall consist of the Council, the members of the staff and the enrolled students.
- (2) The University shall be a body corporate and under its corporate name —
 - (a) has perpetual succession;
 - (b) shall have a common seal;
 - (c) may sue and be sued in any court;
 - (d) may take, purchase and hold real and personal property, including property devised, bequeathed or given to the University;
 - (e) may grant, sell, alienate, assign and demise real and personal property acquired or held by the University as it thinks fit subject only, in respect of property devised, bequeathed or given to the University, to the express trusts of any deed, will, or instrument under which the property was acquired;
 - (ea) may grant leases of land vested in the University under section 28 for a term not exceeding 99 years subject, where the term exceeds 21 years, to the approval of the Governor;
 - (f) may do and suffer all other acts and things that bodies corporate may by law do and suffer.

[Section 5 amended by No. 63 of 1990 s. 7 and 19; No. 8 of 2005 s. 14.]

6. Common seal

- (1) The common seal of the University shall be kept in such custody as the Council directs and shall not be used except upon resolution of the Council or as may be authorised by the Statutes.

- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the University affixed to any document and shall presume that it was duly affixed until the contrary is proved.

[Section 6 amended by No. 63 of 1990 s. 19.]

7. Functions of the University

The functions of the University shall include the following —

- (a) to provide, on a full-time or part-time basis, courses of study appropriate to a university to meet the needs of the community in this State;
- (b) to encourage and provide facilities for the development and improvement of tertiary education;
- (c) to support and pursue research and scholarship and aid the advancement, development, and practical applications to education, industry, commerce and the community, of knowledge or any techniques;
- (d) to provide such courses of study as may be approved by the Council;
- (e) to foster the general welfare and development of all enrolled students;
- (f) to promote and encourage collaboration and consultation between the University and other institutions and authorities to ensure the greatest effectiveness and economy in expenditure and the most beneficial relationship between the University and other educational institutions throughout the State; and
- (g) to provide such facilities relating to its functions as the Council thinks necessary or conducive to their attainment.

[Section 7 amended by No. 63 of 1990 s. 8 and 19.]

Part III — The Council of the University

[Heading amended by No. 63 of 1990 s. 19.]

8. The Council

The governing authority of the University is the Council.

[Section 8 amended by No. 63 of 1990 s. 19.]

9. Constitution of the Council

(1) Subject to this Act the Council shall consist of —

- (a) 6 persons appointed by the Governor being persons with experience in education, the professions, industry or commerce and such other persons who are representative of the community;
- (aa) 1 person who is nominated by the Minister charged with the administration of the *School Education Act 1999*;
- (b) the person for the time being holding office as the chief executive officer of the University;
- (c) 2 persons who are members of the full-time academic staff of the University who are elected by members of that staff in such manner as is prescribed by Statute;
- (d) 1 person who is a member of the full-time salaried staff, other than academic staff, of the University, and who is elected by members of that staff in such manner as is prescribed by Statute;
- (e) 2 persons who are enrolled students of the University, and who are elected by the enrolled students of the University, in such manner as is prescribed by Statute;
- (f) 2 persons who are elected by and from among the persons whose names are registered on the Register of Alumni maintained by the University;

[(g) and (h) deleted]

- (i) 5 persons appointed from time to time by co-option by the Council; and
 - (j) if he is not already a member pursuant to one of the foregoing paragraphs, the Chancellor.
- (2) Proceedings of the first meeting of the Council after the commencement date are not invalid by reason only that a recommendation for or an appointment to an office referred to in subsection (1)(i) has not been made.
- (3) The following persons are not eligible to be a member under subsection (1)(a), (aa) or (i) —
 - (a) a person who is a member of the staff or otherwise engaged by the University;
 - (b) an enrolled student.
- (4) The following persons are not eligible to be a member under subsection (1)(e) —
 - (a) a full-time member of the staff of the University;
 - (b) a part-time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full-time member of staff.
- (5) The following persons are not eligible to be a member under subsection (1)(f) —
 - (a) a full-time member of the staff of the University;
 - (b) a part-time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full-time member of staff;
 - (c) an enrolled student who is enrolled on a full-time basis.
- (6) Of the members —
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector); and

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- (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector),

and the member mentioned in paragraph (b) may also be one of the members mentioned in paragraph (a).

[Section 9 amended by No. 63 of 1990 s. 9 and 19; No. 22 of 1996 s. 16(4); No. 10 of 1998 s. 30(1); No. 36 of 1999 s. 247; No. 74 of 2003 s. 46(4); No. 8 of 2005 s. 15.]

10. Term of office

- (1) Subject to this Act —
 - (a) an appointed member holds office for such period not exceeding 3 years as is specified in the instrument of his appointment;
 - (b) an elected member, other than a member referred to in section 9(1)(e) holds office for a term of 3 years from the date on which his election takes effect;
 - (c) a member referred to in section 9(1)(e) holds office for a term of one year from the date on which his election takes effect; and
 - (d) a person holding office as a member pursuant to section 9(1)(j) shall hold that office for the term of his office as Chancellor.
- (2) Subject to subsections (3), (4) and (4a), all retiring members are, unless otherwise disqualified, eligible for reappointment or re-election.
- (3) A member referred to in section 9(1)(e) is not eligible for re-election more than once.
- (4) A member other than a member referred to in section 9(1)(e) is not eligible to be reappointed on the expiry of a third successive term of office until 12 months have elapsed after such expiry.

- (4a) A member who is removed from office by the Council under section 11A is not eligible to be a member again until 5 years have elapsed since the removal.
- (5) Where a vacancy occurs in the office of an elected member —
- (a) if, at the expiration of 3 months from the occurrence of the vacancy, the office has not been filled by election, it may be filled by a person who has been appointed by the Governor and has the like prescribed qualification as that of the member whose office has become vacant; and
 - (b) if the vacancy occurs otherwise than by effluxion of time, the person who fills the vacancy shall, subject to this Act, hold office as member for the residue of his predecessor's term of office.
- (6) In this section —
- “appointed member”** means a member referred to in section 9(1)(a) or 9(1)(i);
- “elected member”** means a member referred to in section 9(1)(c), 9(1)(d), 9(1)(e) or 9(1)(f).

[Section 10 amended by No. 63 of 1990 s. 19; No. 8 of 2005 s. 17.]

10A. Members' duties

Schedule 1 Division 1 has effect.

[Section 10A inserted by No. 8 of 2005 s. 18.]

11. Vacation of office

The office of a member becomes vacant if —

- (a) his term of office expires by effluxion of time;
- (b) he resigns his office by writing under his hand addressed to the Minister;
- (c) he becomes permanently incapable of performing his duties as a member;

s. 11A

- (d) he is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (e) he is convicted of an indictable offence;
- (ea) he is removed from office by the Council under section 11A;
- (eb) he is, or becomes, disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth;
- (f) he is absent without leave of the Council from 3 consecutive meetings of the Council; or
- (g) he ceases to hold any qualification required for his becoming or being a member.

[Section 11 amended by No. 8 of 2005 s. 19.]

11A. Removal of members for breach of certain duties and suspension pending removal

- (1) The Council may —
 - (a) remove from office a member for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3;
 - (b) suspend from office a member who is alleged to have breached a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 until the motion for removal is put to the vote.
- (2) The removal or suspension from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed or suspended from office for breach of duty) was duly given.
- (3) Despite section 14(1), the removal or suspension of a member from office may be effected only if the motion for removal or suspension is supported by a majority comprising enough of the members for the time being for their number to be at least 2/3 of the total number of offices (whether vacant or not) of member.

- (4) The motion for removal or suspension must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal or suspension refers does not attend the meeting, a reasonable opportunity to reply to the motion is to be taken to have been given if notice of the meeting has been duly given.
- (6) The Council cannot remove or suspend from office a member for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 except in accordance with this section.
- (7) A person must not vote on any question relating to the person's removal or suspension from office by the Council for the breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3, or be present while the matter is being considered at a meeting.
- (8) This section applies only in relation to a breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 that occurs after the *Universities Legislation Amendment Act 2005* comes into operation.
- (9) A person does not breach a duty mentioned in Schedule 1 clause 1(1)(a), (b) or (c) by doing or omitting to do anything in compliance with a direction given to the person in exercise of a power conferred by a written law.
- (10) Subsection (9) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to Schedule 1 clause 1(1)(a), (b) or (c) and the direction did not require that it be done in that manner.
- (11) The suspension from office of a member does not create a vacancy in that office.

[Section 11A inserted by No. 8 of 2005 s. 20.]

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12. Chancellor and meetings of Council

- (1) The members shall from time to time as occasion arises —
 - (a) elect a person, whether a member or not, to be the Chancellor of the University for a term not exceeding 3 years;
 - (b) elect one of their number to be the Pro-Chancellor of the University for a term not exceeding 3 years.
- (2) A person whose whole or principal employment is that of a member of the staff is not eligible to be elected Chancellor or Pro-Chancellor of the University.
- (3) The Chancellor shall preside at all meetings of the Council at which he is present.
- (4) At any meeting of the Council at which —
 - (a) the Chancellor is not present, the Pro-Chancellor of the University shall preside at the meeting;
 - (b) the Chancellor and the Pro-Chancellor of the University are not present, the members present at the meeting shall elect a member to preside at that meeting,and while so presiding the Pro-Chancellor of the University or the member, as the case may be, has all the powers and duties of the Chancellor.
- (5) Subject to the Statutes, the Council shall hold such meetings as are necessary for the performance of its functions.
- (6) Subject to the Statutes, the Chancellor may at any time convene a meeting of the Council and shall convene a meeting when requested in writing by the Minister to do so or when so requested by any 4 members.
- (7) Subject to this Act and the Statutes the Council may regulate its own procedure in such manner as it thinks fit.

[Section 12 amended by No. 63 of 1990 s. 19.]

13. Disclosure of interests

Schedule 1 Division 2 has effect.

[Section 13 inserted by No. 8 of 2005 s. 21.]

14. Quorum

- (1) At a meeting of the Council —
 - (a) not less than one-half of the total number of members for the time being forms a quorum;
 - (b) a question arising at the meeting shall be determined by a majority of the valid votes of the members present.
- (2) No act or thing done by the Council is invalidated, prejudiced or affected by reason of any vacancy in the membership of the Council or any failure to appoint or elect any member, or any defect in the appointment or election of any member so long as a quorum of the Council remains.

15. Delegation by Council

- (1) The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution delegate all or any of its powers, authorities, duties and functions under this Act, except this power of delegation and its powers in relation to the making of Statutes or by-laws, to any board or committee constituted under this Act or a Statute or to a member or to a committee consisting of members appointed by the Council or to any officer or officers of the University.
- (2) The Council may by resolution revoke a delegation given under this section and no delegation so given prevents the exercise or discharge by the Council of any of its powers, authorities, duties or functions.
- (3) Each committee appointed by the Council pursuant to this section shall report to the Council on its activities at such times as the Council directs.

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[Section 15 amended by No. 63 of 1990 s. 19.]

Part IV — Functions, duties and powers of the Council

16. Functions and duties of the Council

- (1) Subject to this Act the Council shall —
- (a) perform any function or duty conferred or imposed upon the University under this Act;
 - (b) act in all matters concerning the University in such manner as appears to it best calculated to promote the objects and interests of the University; and
 - (c) control and manage the operation, affairs, concerns and property of the University.

[(2) repealed]

[Section 16 amended by No. 48 of 1989 s. 22; No. 63 of 1990 s. 10 and 19.]

17. Powers of Council

- (1) Subject to this Act and the Statutes the Council has power to do all things necessary or convenient to be done for or in connection with the operation, affairs, concerns and property of the University and, in particular, the Council —
- (a) may, on behalf of the University, enter into and execute agreements with government departments and with other tertiary or post-secondary education institutions for the purpose of the academic or other salaried staffing of the University and for the provision of the education that the University is authorised by this Act to provide;
 - (b) may, on behalf of the University, enter into and execute contracts for the planning, construction, modification and maintenance of buildings and for minor works and services;
 - (c) may provide courses of study appropriate to a university on a full-time or part-time basis at such place or places as are determined by the Council and may with the

s. 17A

- approval of the Minister declare that any such place or places constitute a campus of the University;
- (d) may establish guidelines for the use of University facilities by the community and levy and collect appropriate charges for such use;
 - (e) may, on behalf of the University, award —
 - (i) appropriate degrees, diplomas and certificates; and
 - (ii) appropriate honorary awards, to enrolled students and other persons; and
 - (f) may exercise any other power vested in it under this Act.
- (2) Any degree, diploma or certificate or honorary award of the University awarded by the Council shall be evidenced by a certificate given in accordance with the Statutes.

[Section 17 amended by No. 48 of 1989 s. 23; No. 63 of 1990 s. 11 and 19.]

17A. Relief of members from liability

If, in any civil proceeding against a person who is or was a member for negligence, default, breach of trust or breach of duty in the person's capacity as a member, it appears to the court that the person —

- (a) is, or may be, liable in respect of the negligence, default or breach;
- (b) has acted honestly; and
- (c) ought fairly to be excused for the negligence, default or breach having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

[Section 17A inserted by No. 8 of 2005 s. 22.]

18. Academic Board

- (1) There shall be an Academic Board of the University.
- (2) The constitution of the Academic Board, the number of persons who shall comprise the Academic Board from time to time, the method of their appointment and selection, their term of office, the conduct of proceedings and all other matters in the opinion of the Council necessary or desirable to ensure the effective exercise of the functions of the Academic Board may be prescribed by Statute.
- (3) The functions of the Academic Board shall include —
 - (a) the discussion and submission to the Council of opinions and recommendations on academic policy, academic development, the admission of students, instruction, studies and examinations, research, the admission to degrees, the discipline of the University and any other matters which in the opinion of the Academic Board are relevant to the objects of this Act;
 - (b) the furnishing to the Council of reports on all matters referred to it by the Council for consideration; and
 - (c) such other acts or matters as may be conferred or imposed by Statute,

and the Academic Board shall have all such powers as may be necessary to discharge its functions.

[Section 18 inserted by No. 63 of 1990 s. 12.]

19. ECU South West Campus (Bunbury)

- (1) On and after the day on which section 46 of the *Statutes (Repeals and Minor Amendments) Act 2003*⁵ comes into operation (in this section referred to as “**the commencement day**”), the campus of the University constituted under this Act, as in force immediately before the commencement day, and known as the Bunbury Campus of the University continues to be

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so constituted but shall be known as the ECU South West Campus (Bunbury) of the University.

- (2) A reference to the Bunbury Campus of the University, or to the Bunbury Institute of Advanced Education, whether by the use of that name or a similar or abbreviated form of that name —
- (a) in a written law passed or made before the commencement day;
 - (b) in any document or other instrument made, executed, entered into or done before the commencement day; or
 - (c) made before the commencement day in any other manner,

shall be construed as if it had been amended to be a reference to the ECU South West Campus (Bunbury) of the University, unless because of the context it would be inappropriate to construe the reference in that manner.

[Section 19 inserted by No. 74 of 2003 s. 46(2).]

20. ECU South West Campus (Bunbury) Advisory Board

- (1) There shall be an ECU South West Campus (Bunbury) Advisory Board.
- (2) The constitution of the ECU South West Campus (Bunbury) Advisory Board, the number of persons who shall comprise the ECU South West Campus (Bunbury) Advisory Board from time to time, the method of their appointment and selection, their term of office, the conduct of proceedings and all other matters in the opinion of the Council necessary or desirable to ensure the effective exercise of the functions of the ECU South West Campus (Bunbury) Advisory Board may be prescribed by Statute.
- (3) Subject to subsection (4), the ECU South West Campus (Bunbury) Advisory Board shall be responsible to the Council for the control and management of —

- (a) the affairs and concerns of the ECU South West Campus (Bunbury); and
 - (b) the property of the University held at, or for the purposes of, the ECU South West Campus (Bunbury).
- (4) The ECU South West Campus (Bunbury) Advisory Board is subject to the direction and control of the Council.

[Section 20 inserted by No. 63 of 1990 s. 12; amended by No. 74 of 2003 s. 46(3), (4).]

[21-23. Repealed by No. 63 of 1990 s. 12.]

24. Western Australian Academy of Performing Arts

- (1) The Western Australian Academy of Performing Arts shall be deemed to have been established as an academy of the University under that name on the day that this Act comes into operation.
- (2) The Council may make Statutes providing for the control and management of the affairs and concerns of the Academy and without limiting the generality of the foregoing may make Statutes —
 - (a) constituting the Board of the Academy;
 - (b) prescribing the terms of office of the members of the Board of the Academy;
 - (c) prescribing the circumstances in which an office of member of the Board of the Academy becomes vacant;
 - (d) providing for meetings of the Board of the Academy;
 - (e) prescribing the powers and duties of the Board of the Academy; and
 - (f) prescribing all matters that are necessary or convenient to be prescribed for the purposes of giving effect to this section.
- (3) The Board of the Academy is subject to the direction and control of the Council.

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[Section 24 amended by No. 63 of 1990 s. 19.]

[25. Repealed by No. 63 of 1990 s. 13.]

Part V — Statutes

26. Power to make Statutes

- (1) The Council may make Statutes, not inconsistent with this Act, with respect to all matters pertaining to the University and in particular may make Statutes with respect to —
- (a) the management, good government and discipline of the University;
 - (b) the use and custody of the common seal of the University, and the functions of the Council that may be exercised without the use of the common seal for that purpose;
 - (c) the organization and supervision of the teaching of enrolled students;
 - (d) the academic and other staff, officers and employees of the University;
 - (e) the manner and time of convening, holding and adjourning the meetings of the Council, the manner of voting at those meetings, the powers and duties of the Chancellor, the conduct and record of the business, the appointment of committees of the Council and the quorum, powers and duties of those committees;
 - (f) the entrance standards for students;
 - (g) the granting of appropriate degrees, diplomas and certificates or honorary awards by the Council;
 - (h) the granting of scholarships, exhibitions, bursaries and prizes;
 - (i) the fees to be charged for courses of study or instruction, examinations, degrees, diplomas and certificates of the University and for such other facilities or privileges of the University as are prescribed;
 - (j) the admission of graduates and students of other educational institutions to any corresponding status in the University without examination;

- (k) the recognition, instead of or for the purpose of any examination or course of study, of any course of study completed or examination passed in any educational institution or under the auspices of any professional association or of any practical work performed in a field approved by the Council;
 - (l) the establishment by the Council of hostels and halls of residence for enrolled students and the management, control and closing of any of those hostels and halls;
 - (m) the government of hostels and halls of residence that are under the control of the Council and the affiliation of hostels and halls of residence that are not under the control of the Council;
 - (n) the control and investment of the property of the University; and
 - [(o) deleted]*
 - (p) any matter authorised or directed by this Act to be prescribed by Statute in relation to the University.
- (2) Without limiting the powers conferred by subsection (1) the Council may make Statutes furthering or facilitating the objects or operation of this Act with respect to long service leave entitlements of members of the staff and in particular providing for lump sum payments, instead of accrued and *pro rata* long service leave entitlements, to or in respect of persons who cease to be members of the staff, but so that the calculation of any such payment shall be based on the rate of salary of the person at the date of his ceasing to be a member of the staff; and so that no payment that exceeds the equivalent of 12 months' salary shall be paid under the Statute.
- (3) Without limiting any of the powers conferred by subsection (1), a Statute with respect to the discipline of the University may —
- (a) prescribe disciplinary offences and disciplinary powers in relation thereto including penalties that may be imposed for the respective offences;

- (b) provide that penalties may be partly of one kind and partly of another but so that no monetary penalty for any one disciplinary offence exceeds \$250;
- (c) prescribe circumstances under which a penalty may be modified or suspended;
- (d) provide, in addition to penalties, for restitution to the University not exceeding \$500 for loss, damage or destruction of university property arising out of the commission of a disciplinary offence;
- (e) prescribe rights of appeal against decisions made in the exercise or purported exercise of disciplinary powers;
- (f) prescribe the persons, classes of persons and bodies of persons who may —
 - (i) make a complaint of a disciplinary offence;
 - (ii) exercise all or any of the prescribed disciplinary powers; or
 - (iii) determine all or any appeals against decisions made in the exercise or purported exercise of disciplinary powers;
- (g) prescribe the practice and procedure in relation to —
 - (i) making a complaint of a disciplinary offence;
 - (ii) exercising disciplinary powers; and
 - (iii) determining appeals against decisions made in the exercise or purported exercise of disciplinary powers;
- (h) prescribe the circumstances under which costs may be awarded to a person the subject of a complaint of a disciplinary offence, prescribing the persons, classes of persons or bodies of persons who may award and fix those costs; and providing for payment thereof out of University funds;

- (i) prescribe the manner in which penalties may be enforced and, in the case of monetary penalties or amounts for restitution, recovered; and
 - (j) prescribe all such other matters as are necessary or expedient to be prescribed for the maintenance of the good order and discipline of the University.
- (4) Without limiting the power of delegation conferred on the chief executive officer by section 30, where a Statute, or a by-law or rule made under a Statute, with respect to the discipline of the University confers on him any disciplinary power or any power to hear and determine appeals from decisions made in the exercise or purported exercise of disciplinary powers or any power to award or fix costs, he may delegate the power to any person, class of persons or body of persons.
- (5) A Statute or a by-law or rule made under a Statute —
 - (a) may be limited in its application to time, place or circumstances; and
 - (b) may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.
- (6) A Statute made under this section may be revoked or amended by a subsequent Statute so made.
- (7) The Statutes may provide for —
 - (a) empowering the Council to make by-laws or rules, not inconsistent with this Act or with any Statute for regulating, or providing for the regulation of, any specified matter with respect to which Statutes may be made, or for carrying out or giving effect to the Statutes, and any of those by-laws or rules shall have the same force and effect as a Statute;
 - (b) the manner of promulgation of those by-laws or rules; and

(c) the revocation or amendment of any of those by-laws or rules.

- (8) The production of a verified copy of any by-law or rule made under subsection (7) under the common seal of the University is evidence of the making and authenticity of the by-law or rule in all courts and before all persons acting judicially.

[Section 26 amended by No. 63 of 1990 s. 14 and 19.]

27. Statutes to be approved by the Governor and published and may be revoked by Parliament

- (1) Every Statute made by the Council shall be sealed with the common seal of the University and shall be transmitted by the Council for the approval of the Governor, and when so approved —
- (a) shall be published in the *Government Gazette*; and
 - (b) shall take effect from the date it is so published or from a later date to be specified in the Statute.
- (2) A copy of each Statute shall be laid before each House of Parliament within 14 sitting days after it is published in the *Government Gazette* if Parliament is then in session, and if not, then within 14 days after the commencement of the next succeeding Session of Parliament.
- (3) If either House of Parliament within the next succeeding 14 sitting days after a copy of a Statute has been laid before it as provided in this section, resolves that the Statute be revoked in whole or in part, that Statute or that part is from the date of such resolution of no effect, but without affecting the validity of anything done pursuant to that Statute in the meantime.
- (4) The production of a copy of a Statute under the common seal of the University or of a document purporting to be a copy of a Statute and to have been printed by the Government Printer is, in all proceedings, sufficient evidence of the Statute.

[Section 27 amended by No. 63 of 1990 s. 19.]

Part VI — University lands

[Heading amended by No. 63 of 1990 s. 19.]

28. Land may be vested in the University

- (1) On the recommendation of the Minister the Governor, by Order in Council, may transfer to the management and control of the University or may vest in the University any land that is —
 - (a) reserved under Part 4 of the *Land Administration Act 1997* as sites for schools and other buildings for the purposes of education; or
 - (b) vested in the Minister by virtue of section 215 of the *School Education Act 1999*,

and on the making of the Order in Council the land therein specified shall vest accordingly.

- (2) The University shall hold and use any land vested in the University under this Act subject to this Act and for the purposes of this Act.
- (3) Where any land in the management and control of, or vested in, the University pursuant to this Act, is no longer required for the purposes of this Act, the Governor, by Order in Council, may re-vest it in Her Majesty of Her Former Estate or in the Minister of his former estate, as the case requires, and thereupon it shall be re-vested accordingly.
- (4) The restrictions imposed by section 5(2)(ea) do not apply to the lease of a portion of the University land to an affiliated residential college, affiliated hostel or hall of residence if it is conditional on the leased land being used only as a place for the residence or education and residence of enrolled students and for such other purposes connected therewith or subordinate thereto as are specified in the lease.

[Section 28 amended by No. 63 of 1990 s. 15 and 19; No. 31 of 1997 s. 24; No. 36 of 1999 s. 247.]

29. Power to make by-laws applicable to lands

- (1) By-laws made by the Council under this section apply only within the boundaries of University lands.
- (2) For the purposes of this section and by-laws made by the Council under this section, the Governor may, by proclamation, —
 - (a) declare any land vested in, or under the management and control of the University to be University lands;
 - (b) alter the boundaries of any University lands; or
 - (c) declare that any land shall cease to be University lands,and the by-laws shall thereupon apply to that land accordingly and to any building, structure or erection on that land.
- (3) The Council may, with the approval of the Governor, make by-laws for the purpose of managing, preserving, and protecting University lands and for the purpose of regulating the terms and conditions on which such lands may be visited or used by any persons whomsoever, and the conduct of such persons when on or upon such lands, and in particular may by by-laws —
 - (a) prohibit or regulate the admission to such lands of persons, vehicles or animals;
 - (b) prescribe the times when and the purposes for which such lands may be used, and the times when and the purposes for which the same shall be open or closed, and prohibit the use thereof or access thereto at any other times, or for any other purpose;
 - (c) prescribe fees to be charged to all or any persons for admission to or use of such lands;
 - (d) provide for the issue to all or any persons using such lands of tickets and requiring the production of such tickets by such persons if and whenever required by any member of the Police Force, or any member of the staff of the University;

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- (e) regulate the conduct of persons using or being in or upon such lands;
- (f) prohibit any nuisance, or any offensive, indecent, or improper act, conduct, or behaviour on such lands;
- (g) prohibit the use of abusive or insulting language on such lands;
- (h) prohibit damage or injury to or interference with such lands, or any tree, shrub, hedge, plant or flower thereon, or any fixed or movable article thereon;
- (i) prohibit the writing or printing of any indecent words, or the writing, printing, or drawing, or affixing of any indecent or obscene picture or representation on such lands, or on any fence, wall, tree, shrub, or hedge thereon;
- (j) prescribe, in respect of an alleged breach of the by-laws involving a vehicle, the circumstances under which the owner of the vehicle is deemed to be the driver or person in charge of the vehicle at the time of the alleged breach;
- (k) prescribe the circumstances under which an authorised person may remove a vehicle, or cause it to be removed, from University lands to a specified place, prescribe his further powers in relation thereto, prescribe the scale of charges to be paid to recover the vehicle from that place, and authorise the Council to hold the vehicle until the prescribed charges are paid;
- (l) prescribe a modified penalty or modified penalties payable to the University by a person or one of a class of persons who does not contest an allegation that he committed any specified breach of the by-laws, and provide that the due payment of a modified penalty is a defence to a charge of the breach in respect of which that modified penalty was paid;
- (m) authorise any member of the Police Force or any member of the staff of the University to remove from such lands all persons guilty of any breach of a by-law,

and to prohibit the obstruction of any such member of the Police Force or member of the staff;

- (n) require any person using such lands to give his name and address, whenever required so to do by any member of the Police Force, or any member of the staff of the University; and
- (o) generally provide for the carrying out of the purposes of this Act, or any Statute,

but no such by-law shall be contrary to the express provisions of this Act or of any Statute.

- (4) In subsection (3) “**authorised person**” means any member of the Police Force, the chief executive officer of the University, or any member of the staff of the University authorised by the chief executive officer in respect of the matters referred to in the provision wherein the expression is used.
- (5) The by-laws —
 - (a) may be limited in their application to time, place or circumstances; and
 - (b) may provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.
- (6) Any by-law may impose a penalty not exceeding \$250 for any breach thereof and proceedings for the recovery of such penalty may be taken by any authorised person in his own name; but all pecuniary penalties shall be appropriated and paid to the University for its use.
- (7) In any proceedings for any contravention of any by-law the allegation in the prosecution notice that any place was on University lands shall be sufficient evidence of the fact alleged in the absence of proof to the contrary.

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- (8) No by-law takes away or restricts any liability, civil or criminal, arising under any provision of any Act other than this Act or at common law.
- (9) A breach of a by-law by an enrolled student is a disciplinary offence proceedings for which may be commenced, heard, and determined under the disciplinary Statutes, by-laws and rules of the University instead of before a court of summary jurisdiction.

[Section 29 amended by No. 63 of 1990 s. 19; No. 78 of 1995 s. 34; No. 84 of 2004 s. 80.]

Part VII — Staff

30. Chief executive officer

- (1) The Council shall appoint and may terminate the appointment of a person to be the chief executive officer of the University.
- (2) The chief executive officer shall hold office as such for such period and on such conditions as the Council determines.
- (3) The chief executive officer has such powers and duties as are prescribed and, unless otherwise expressly provided therein, the chief executive officer may delegate any of those powers and duties to any person or committee of persons.

[Section 30 amended by No. 63 of 1990 s. 16 and 19.]

31. Academic and other staff

- (1) Subject to this Act and any relevant award or agreement in force under the *Industrial Relations Act 1979* —
 - (a) the Council may appoint the academic and other staff of the University and other officers and engage employees for the University and may suspend or terminate the employment of any person so appointed or engaged;
 - (b) the terms and conditions of employment of the staff, officers and employees of the University, including the salary or wages payable, are such terms and conditions as the Council determines.
- (2) Where the Minister, after consultation with the Minister for Public Sector Management ⁶ considers that a person appointed or engaged under subsection (1), other than a member of the academic staff, is in like employment with the University to any employment in the Public Service of the State, that person shall have like terms and conditions of employment with the University to those in the employment in the Public Service of the State.

[Section 31 amended by No. 63 of 1991 s. 19.]

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32. Continuation of existing rights

- (1) Where a person appointed or engaged under section 30 or 31 was immediately before being so appointed or engaged, an officer of the Public Service of the State, an officer appointed under the *Education Act 1928*² or section 235(1)(c) of the *School Education Act 1999* or a member of the staff of a college under the *Colleges Act 1978*⁴ or the *Vocational Education and Training Act 1996* he retains his existing and accruing rights and in particular his rights in relation to sick leave, long service leave, retirement and his rights if any under the *Superannuation and Family Benefits Act 1938*⁷ or the *Government Employees Superannuation Act 1987*⁸.
- (2) A person appointed or engaged under section 30 or 31, other than a person referred to in subsection (1), shall retain his rights, if any, under the *Superannuation and Family Benefits Act 1938*⁷ or the *Government Employees Superannuation Act 1987*⁸.

[Section 32 amended by No. 77 of 1985 s. 12; No. 36 of 1999 s. 247.]

[33. Repealed by No. 1 of 1995 s. 35.]

34. Superannuation

- (1) The Council may —
 - (a) establish and maintain a superannuation scheme; or
 - (b) join or participate with other educational institutions in a superannuation scheme,to make financial provision in respect of the retirement, invalidity or death of such members of the staff of the University as the Council decides may be members of the superannuation scheme and as become such members.
- (2) The Council may —
 - (a) amend a superannuation scheme established under subsection (1)(a); or

- (b) agree to the amendment of a superannuation scheme in which the Council has joined or participates under subsection (1)(b),

but any such amendment shall not prejudice any right that has accrued under the superannuation scheme concerned before the amendment.

- (3) A member of the staff of the University whom the Council decides may be a member of a superannuation scheme referred to in subsection (1) is not compelled to become such a member unless he is so compelled pursuant to a condition of his appointment under section 30 or 31 but, if he is such a member, he may only be a member of one such scheme and he shall not be a member of the Western Australian Post-Secondary Education Superannuation Scheme established under section 36 of the Colleges Act as incorporated by section 34 as in force before the coming into operation of section 13 of the *Acts Amendment (Educational Institutions Superannuation) Act 1985*¹ or a contributor for pension, superannuation or benefits under the *Superannuation and Family Benefits Act 1938*⁷.

[Section 34 inserted by No. 77 of 1985 s. 13; amended by No. 63 of 1990 s. 19.]

35. Staff associations

- (1) For the purposes of this Act there may be established and maintained in the University —
- (a) an organized association of academic staff; and
 - (b) an organized association of other salaried staff,

and those associations shall be the recognized means of communication between academic staff, and other salaried staff, respectively, and the Council, but for those purposes there shall not be at the same time more than one such association of academic staff, and one such association of other salaried staff.

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- (2) The primary function of an association maintained under subsection (1) shall be to further the common interests of its members.

[Section 35 amended by No. 63 of 1990 s. 19.]

Part VIII — Financial provisions

36. Funds of the University

- (1) The funds available to the Council for the purpose of enabling it to exercise its powers, authorities, duties and functions under this Act are —
- (a) moneys from time to time appropriated by Parliament for that purpose;
 - (b) moneys received by the University by way of fees, charges, gifts, bequests or otherwise whether paid or made to the University or the Council;
 - (c) moneys borrowed by the University for the purposes of this Act; and
 - (d) moneys made available to the Council or the University for the purposes of this Act.
- (2) The moneys referred to in subsection (1) shall be —
- (a) credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) paid into and placed to the credit of an account at a bank approved by the Treasurer,
- and the account is to be called the Edith Cowan University Account.
- (3) The Council shall apply the funds standing to the credit of the Edith Cowan University Account pursuant to and only for the purposes of this Act.

[Section 36 amended by No. 63 of 1990 s. 19; No. 49 of 1996 s. 53.]

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37. Power to borrow

- (1) The Council is authorised with the prior approval in writing of the Treasurer to borrow money upon such terms and conditions as the Treasurer approves.
- (2) The Treasurer may in the name and on behalf of the Crown in right of the State guarantee the payment of principal moneys and interest thereon in respect of moneys borrowed by the University under this section and any liability of the Crown arising out of the guarantee is chargeable to the Consolidated Fund which to the extent necessary is appropriated accordingly.
- (3) A guarantee given under this section shall be in such form and subject to such conditions as the Treasurer determines and without limiting the generality of the foregoing shall be subject to the condition that the lender shall not, without the consent of the Treasurer, assign or encumber the benefit of the guarantee.

[Section 37 amended by No. 63 of 1990 s. 19; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

38. Powers of Council to invest

Subject to section 38A in relation to moneys held on trust by the University for the purposes of the University, the Council —

- (a) may invest any moneys standing to the credit of the Edith Cowan University Account that are not immediately required for the purposes of this Act in any securities that the Council thinks fit; and
- (b) may sell and realise any security or reinvest the proceeds of any sale.

[Section 38 inserted by No. 70 of 2003 s. 26.]

38A. Trust property and trust moneys

The Council —

- (a) may act as trustee or manager of any property or moneys held on trust by the University for the purposes of the University; and
- (b) may apply any property or moneys so held, and not immediately required for the purposes of the trust declared in relation to the property or moneys, in any way that is not inconsistent with the instrument creating the trust.

[Section 38A inserted by No. 70 of 2003 s. 26.]

38B. Repayment of trust moneys

- (1) The amount of any moneys that are applied under section 38A(b) —
 - (a) is taken to be a loan to the University from the trust estate or trust fund from which the amount is taken; and
 - (b) subject to subsection (2), is repayable by the Council as approved by the Minister with interest at the rate approved by the Minister from time to time.
- (2) An amount that is repayable under subsection (1)(b) (including interest on the amount) is to be repaid by the Council within 25 years.

[Section 38B inserted by No. 70 of 2003 s. 26.]

39. Application of *Financial Administration and Audit Act 1985*

- (1) Subject to subsection (3), the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the University and its operations.
- (2) Notwithstanding the *Financial Administration and Audit Act 1985* the financial year of the University shall end on 31 December.

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- (3) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985* —
- (a) sections 21, 22, 42 and 44 of that Act shall not have effect in relation to the University; and
 - (b) section 58 of that Act shall have effect in relation to the University as if it had been enacted in the following form —

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58. Treasurer’s Instructions

- (1) The Treasurer may prepare and issue and amend instructions, in this Act called the “Treasurer’s Instructions”, with respect to the annual report required to be prepared under section 66, including instructions with respect to accounting standards and other requirements for the preparation of financial statements required under section 67, but instructions issued under this section shall not be inconsistent with this Act or the regulations.
- (2) Without limiting the generality of subsection (1), the Treasurer may issue instructions relating to —
 - (a) the establishment and keeping of the accounts of statutory authorities including accounts of subsidiary and related bodies;
 - (b) the form and content of financial statements and reports on the operations of statutory authorities and their subsidiary and related bodies, including information to be disclosed in respect of affiliated bodies; and
 - (c) the preparation of performance indicators of statutory authorities and their subsidiary and related bodies.

- (3) The Treasurer's Instructions may be issued —
- (a) so as to apply —
 - (i) at all times or at a specified time;
 - (ii) to all statutory authorities and their subsidiary and related bodies or to specified statutory authorities or subsidiary or related bodies;
 - (b) so as to require a matter affected by the instructions to be —
 - (i) in accordance with a specified standard or specified requirement;
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of person or body;
 - (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body;
 - (d) so as to empower the Treasurer by written direction issued generally or in a particular case to supplement the requirements of the instructions; and
 - (e) so as to provide, or to empower the Treasurer to provide by written direction, in a specified case or class of case for the exemption of persons or things or a class of persons or things from the provisions of the instructions, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined.
- (4) Subject to this Act, every accountable authority and officer shall comply with the Treasurer's Instructions.

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- (5) In subsection (3) “**specified**” means specified in the instructions.
- (6) The Treasurer shall cause to be published in the *Gazette* notice of the making or amendment of Treasurer’s Instructions, but notices under this subsection need not include the text of the instructions or the amendment.

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[Section 39 inserted by No. 32 of 1991 s. 3.]

[40. *Repealed by No. 98 of 1985 s. 3.]*

Part IX — Student Guild

41. Establishment of Student Guild

- (1) On and after the day on which the *Western Australian College of Advanced Education Amendment Act 1990*¹ comes into operation (in this section referred to as “**the commencement day**”) the body corporate that was continued in existence under this Act as though it were established under this Act by the name of the “Western Australian College of Advanced Education Student Guild” is preserved and continues in existence as a body corporate under and subject to the provisions of this Act to be called the “Edith Cowan University Student Guild” but so that the corporate identity of the body corporate and its rights and obligations are not affected by the change in name.
- (1a) A reference to the Western Australian College of Advanced Education Student Guild, whether by use of that name or a similar or abbreviated form of that name —
- (a) in a written law passed or made before the commencement day;
 - (b) in any document or other instrument made, executed, entered into or done before the commencement day; or
 - (c) made before the commencement day in any other manner,

shall be construed as if it had been amended to be a reference to the Edith Cowan University Student Guild, unless because of the context it would be inappropriate to construe the reference in that manner.

- (2) The Student Guild under its corporate name —
- (a) has perpetual succession;
 - (b) shall have a common seal;
 - (c) may sue and be sued in any court; and

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- (d) subject to the Statutes, may do and suffer all other acts and things that bodies corporate may by law do and suffer.
- (3) The Student Guild shall be an organized association of enrolled students the primary function of which is to further the common interests of its members.
- (4) The Student Guild shall be the recognised means of communication between its members and the Council in accordance with any Statutes that the Council makes.
- (5) Subject to the conditions and qualifications for membership prescribed by Statute any enrolled student is eligible to be a member of the Student Guild.
- (6) A student becomes a member of the Student Guild upon enrolment, for the period of enrolment, unless —
 - (a) at the time of enrolment that student elects not to become a member; or
 - (b) the enrolled student is not eligible to be a member.
- (6a) Despite subsection (6), an enrolled student may resign at any time as a member of the Student Guild.
- (6b) No academic benefit, right or privilege shall be denied to or withheld from any enrolled student by reason of that student not being a member of the Student Guild.
- (7) An enrolled student (whether a member of the Student Guild or not) may vote in an election held to fill a vacancy in a Student Guild office, but an enrolled student cannot hold an elective office unless that enrolled student is a member of the Student Guild.
- [(8) repealed]*
- (9) The Statutes may prescribe —
 - (a) the classes of membership and the conditions of or qualifications for membership of the Student Guild;

- (b) the powers, duties and functions of the Student Guild;
and
- (c) such other matters and things as are necessary or
convenient for the effective exercise of the powers,
duties and functions of the Student Guild.

*[Section 41 amended by No. 63 of 1990 s. 18 and 19; No. 91 of
1994 s. 10; No. 44 of 2002 s. 7.]*

41A. Amenities and services fee

- (1) An annual amenities and services fee shall be set at an amount
determined by the Council after receiving a report from, and a
recommendation by, the Student Guild.
- (2) The Council may determine that a different level of the
amenities and services fee is payable by a specified class of
enrolled students.
- (3) The amenities and services fee is payable to the Council by each
enrolled student, except a student exempted from doing so, or
made ineligible to do so, by Statute.
- (4) Despite section 36(1)(b), the Council shall pay to the Student
Guild a percentage of the amenities and services fees collected
that is not less than the percentage of enrolled students that are
members of the Student Guild.
- (5) Despite subsection (4), and regardless of the number of enrolled
students who are members of the Student Guild, the percentage
of the amenities and services fees paid to the Student Guild
must exceed 50% of those fees.

[Section 41A inserted by No. 44 of 2002 s. 8.]

41B. Council to include detail in Statute

- (1) The Council shall specify, by Statute, the broad categories of
amenities and services within which the fees collected may be
expended.

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- (2) The fees collected each year are to be allocated to broad categories of expenditure under an agreement between the Council and the Student Guild, and the Council shall prescribe, by Statute, the processes for —
- (a) determining the broad categories of amenities and services within which the fees are to be expended; and
 - (b) resolving disputes that arise in the process of those determinations.
- (3) The Council shall prescribe, by Statute, the measures by which the Student Guild is to account for the fees received, and those measures shall include —
- (a) a requirement that the annual financial statements of the Student Guild are to be audited by an independent external auditor whose appointment requires Council approval; and
 - (b) a requirement for the Student Guild to provide a copy of each audited balance sheet, and an annual statement of the Student Guild's income and expenditure, to the Council.

[Section 41B inserted by No. 44 of 2002 s. 8.]

Part X — Miscellaneous

42. Governor to be Visitor

- (1) The Governor shall be the Visitor of the University, and has authority, as and when he thinks fit, to do all things that pertain to the office of Visitor.
- (2) In this section, the expression “**Governor**” means the Governor of the State and not the Governor acting with the advice and consent of the Executive Council.

[Section 42 amended by No. 63 of 1990 s. 19.]

43. Exemption from rate or tax

- (1) No tax or rate may be charged or levied upon any property vested in the University.
- (2) Subsection (1) does not operate so as to exempt property that is vested in the University if it is leased to or ordinarily occupied by any other person.

[Section 43 amended by No. 63 of 1990 s. 19.]

44. No religious tests

No religious test shall be administered to any person in order to entitle that person to be admitted as an enrolled student of the University or to hold office in the University, or to graduate at the University, or to hold any advantage or privilege of the University.

[Section 44 amended by No. 63 of 1990 s. 19.]

Part XI — Transitional and savings

45. Termination of office

The terms of office of the members of the Council appointed under section 13 of the Colleges Act are hereby terminated by force of this section.

46. Interim provisions for members of the Council

- (1) The first Chancellor of the Council under this Act shall be appointed by the Governor and the term of his appointment shall be for such period not exceeding 3 years as is specified in his instrument of appointment.
- (2) Until an elective office on the Council is filled for the first time under this Act by the election of a person in the prescribed manner that office shall be filled by a person who has the prescribed qualification for holding that office, and who is appointed by the Minister.
- (3) In subsection (2) “**elective office**” means an office of member referred to in section 9(1)(c), (d), (e), or (f).

47. Continuation of Statutes, by-laws and rules

- (1) On and after the commencement date any Statute or by-law pertaining to the College, or to the lands of the College, that was in force under the Colleges Act immediately before that date shall, subject to this Act and in so far as it is not inconsistent with this Act, continue in force and be deemed to be a Statute or by-law, as the case may be, made by the Council of the University pursuant to this Act.
- (2) On and after the commencement date any rule of the College that was in force immediately before that date shall, subject to this Act and in so far as it is not inconsistent with this Act, continue in force and be deemed to be a rule made by the Council pursuant to this Act.

- (3) In any Statute, by-law or rule continued in force by subsection (1) or (2) —
- (a) any reference to the Colleges Act shall be read and construed as a reference to this Act;
 - (b) any reference to the College by its corporate name under the Colleges Act shall be read and construed as a reference to the University by its corporate name under this Act.
- (4) Until a proclamation is made under section 29(2), by-laws that are continued in force by subsection (1) shall apply to all land vested in or in the management and control of the University.
- [Section 47 amended by No. 63 of 1990 s. 19.]*

48. Staff

All persons who were, immediately before the commencement date, members of the staff of the College, shall continue to be members of the staff of the University under this Act and all such persons shall retain their existing and accruing rights including their rights in relation to sick leave, long service leave, retirement and pension fund benefits and any service regarded as “service” with the College under the Colleges Act shall be regarded as “service” with the University under this Act.

[Section 48 amended by No. 63 of 1990 s. 19.]

49. Property

On and from the commencement date all property that was, immediately before that date, held and used for the purposes of the Colleges Act by the College, shall be held and used by the University for the purposes of this Act.

[Section 49 amended by No. 63 of 1990 s. 19.]

s. 50

50. Superannuation

The rights and interests of any contributor or pensioner under any superannuation scheme or agreement established or entered into under section 35 or 36 of the Colleges Act shall continue as though the rights and interests of the contributor or pensioner were rights and interests obtained in respect of service under this Act.

51. Associations continued

The associations formed for the purposes of sections 43(1)(a) and 43(1)(b) of the Colleges Act are continued as though they were established for the purposes of this Act.

52. Board of Academy continued

Until a Statute providing for the constitution of a body for the management of the Academy under this Act comes into operation the members of the Board of Management of the Academy holding office as such immediately before the commencement date shall continue in office after that date but the Minister may appoint a person to any office that becomes vacant before the date that the Statute comes into operation.

53. Continuation of rights of students

The rights and interests in association with enrolment of every student of the University, existing immediately before the commencement date shall, subject to the Statutes and rules of the University, continue as though those rights and interests were rights and interests with respect to the University under this Act.

[Section 53 amended by No. 63 of 1990 s. 19.]

Schedule 1 — Council members

[s. 10A, 11A, 13]

[Heading inserted by No. 8 of 2005 s. 23.]

Division 1 — Duties

[Heading inserted by No. 8 of 2005 s. 23.]

1. Duties

- (1) Each member —
 - (a) must at all times act honestly in the performance of the functions of a member, whether within or outside the State;
 - (b) must at all times exercise the degree of care and diligence in the performance of the functions of a member, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Council's circumstances;
 - (c) must at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member;
 - (d) must not, whether within or outside the State, make improper use of information acquired by virtue of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;
 - (e) must not, whether within or outside the State, make improper use of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.
- (2) Nothing in subclause (1) or section 11A or 13 affects —
 - (a) any other duty a member may have under any other law; or
 - (b) the operation of any other law in relation to such a duty.

[Clause 1 inserted by No. 8 of 2005 s. 23.]

Division 2 — Disclosure of interests

[Heading inserted by No. 8 of 2005 s. 23.]

2. Disclosure of interests

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest at a meeting of the Council.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

[Clause 2 inserted by No. 8 of 2005 s. 23.]

3. Voting by interested members

A member who has a material personal interest in a matter that is being considered by the Council —

- (a) must not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) on a proposed resolution under clause 4 in respect of the matter, whether relating to that member or a different member;

and

- (b) must not be present while —
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

[Clause 3 inserted by No. 8 of 2005 s. 23.]

4. Clause 3 may be declared inapplicable

Clause 3 does not apply if the Council has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

[Clause 4 inserted by No. 8 of 2005 s. 23.]

5. Quorum where clause 3 applies

Despite section 14(1), if a member is disqualified under clause 3 in relation to a matter, a quorum is present during the consideration of the matter if at least 8 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

[Clause 5 inserted by No. 8 of 2005 s. 23.]

6. Minister may declare clauses 3 and 5 inapplicable

- (1) The Minister may, on the application of a member, by writing declare that clause 3 or 5 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament within 14 sitting days of that House after the declaration is made.

[Clause 6 inserted by No. 8 of 2005 s. 23.]

Notes

- ¹ This is a compilation of the *Edith Cowan University Act 1984* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Western Australian College of Advanced Education Act 1984</i> ⁹	18 of 1984	31 May 1984	1 Sep 1984 (see s. 2 and <i>Gazette</i> 24 Aug 1984 p. 2567)
<i>Acts Amendment (Educational Institutions Superannuation) Act 1985</i> Pt. III ¹⁰	77 of 1985 (as amended by No. 63 of 1990 s. 22)	20 Nov 1985	16 Dec 1985 (see s. 2 and <i>Gazette</i> 13 Dec 1985 p. 4758)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment and Repeal (Post-Secondary Education) Act 1989</i> Pt. 8	48 of 1989	9 Jan 1990	1 Jan 1990 (see s. 2)
<i>Western Australian College of Advanced Education Amendment Act 1990</i>	63 of 1990	17 Dec 1990	1 Jan 1991 (see s. 2)
Reprint of the <i>Edith Cowan University Act 1984</i> as at 16 May 1991 (includes amendments listed above)			
<i>Acts Amendment (Financial Administration and Audit) Act 1991</i> Pt. 3	32 of 1991	4 Dec 1991	1 Jan 1992
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Voluntary Membership of Student Guilds and Associations Act 1994</i> Pt. 4	91 of 1994	5 Jan 1995	5 Jan 1995 (see s. 2)
<i>Industrial Legislation Amendment Act 1995</i> s. 35	1 of 1995	9 May 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 24 Nov 1995 p. 5389)

Short title	Number and year	Assent	Commencement
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 25	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Education Amendment Act 1996</i> s. 16(4)	22 of 1996	11 Jul 1996	11 Jul 1996 (see s. 2(1))
<i>Financial Legislation Amendment Act 1996</i> s. 53 and 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 22	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 30 ¹¹	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the Edith Cowan University Act 1984 as at 1 Oct 1999 (includes amendments listed above)			
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Acts Amendment (Student Guilds and Associations) Act 2002</i> Pt. 3	44 of 2002	3 Jan 2003	25 Jan 2003 (see s. 2 and <i>Gazette</i> 24 Jan 2003 p. 141)
<i>Acts Amendment and Repeal (Competition Policy) Act 2003</i> Pt. 7	70 of 2003	15 Dec 2003	21 Apr 2004 (see s. 2 and <i>Gazette</i> 20 Apr 2004 p. 1297)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 46 ¹²	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 3: The Edith Cowan University Act 1984 as at 20 Aug 2004 (includes amendments listed above)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Universities Legislation Amendment Act 2005</i> Pt. 3 ¹⁴	8 of 2005	7 Jul 2005	13 Aug 2005 (see s. 2 and <i>Gazette</i> 12 Aug 2005 p. 3651)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in

this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 40 ¹³	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

- ² Repealed by the *School Education Act 1999*.
- ³ Under the *Teacher Education Act 1972* s. 57, the appointed day was 26 November 1973. See *Gazette* 23 November 1973 p. 4266. The Act was repealed by the *Colleges Act 1978* s. 5.
- ⁴ Repealed by the *Vocational Education and Training Act 1996*.
- ⁵ Referred to and printed incorrectly in the *Statutes (Repeals and Minor Amendments) Act 2003* as the *Statutes (Repeals and Minor Amendments) Act 2001*. The reference was changed under the *Reprints Act 1984* s. 7(5)(b)(v) and s. 7(5)(c)(i).
- ⁶ Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- ⁷ The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39 but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26 and those provisions may be amended by regulations under subsection (3) of that section.
- ⁸ Repealed by the *State Superannuation Act 2000*.
- ⁹ Now known as the *Edith Cowan University Act 1984*; short title changed (see note under s. 1).

¹⁰ The *Acts Amendment (Educational Institutions Superannuation) Act 1985* s. 14 and 15 read as follows:

“

14. Rights of contributors to The Superannuation Fund and the Western Australian Post Secondary Education Superannuation Scheme

- (1) Notwithstanding section 13, where a member of the staff of the University was, immediately before the coming into operation of that section —
- (a) a contributor for pension, superannuation or benefits under an agreement entered into by the Council under section 35 of the *Colleges Act* as incorporated by section 34 of the principal Act as in force before the coming into operation of section 13, he shall be entitled to continue to be such a contributor and to retain his accrued rights under the *Superannuation and Family Benefits Act 1938*; or
 - (b) a member of the Western Australian Post Secondary Education Superannuation Scheme established under section 36 of the *Colleges Act* as incorporated by section 34 of the principal Act as in force before the coming into operation of section 13, he shall be entitled to continue to be such a member and to retain his accrued rights under that superannuation scheme.

15. Rights and liabilities of the Council not affected

Nothing in section 13 affects any rights or liabilities of the Council under an agreement entered into by the Council under section 35 of the *Colleges Act* as incorporated by section 34 of the principal Act as in force before the coming into operation of section 13.

”.

¹¹ The *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 30(2) reads as follows:

“

- (2) Despite subsection (1)(a), each person appointed and holding office as a member of the Council of the University under section 9(1)(a) of the Act immediately before the commencement of this section continues, subject to the Act, to hold office as a member for the remainder of the period for which he or she was appointed.

12 The *Statutes (Repeals and Minor Amendments) Act 2003* s. 46(5) reads as follows:

- “
- (5) A person holding office as the chairperson or a member of the Bunbury Campus Advisory Board immediately before the commencement day continues to hold office on and after that day, subject to the Statute of the University under which the person was appointed, as the chairperson or a member of the ECU South West Campus (Bunbury) Advisory Board, as the case requires, for the remainder of the period for which he or she was appointed to the Bunbury Campus Advisory Board.
- ”

13 On the date on which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 40 had not come into operation. It reads as follows:

“

40. Edith Cowan University Act 1984 amended

The *Edith Cowan University Act 1984* is amended as follows:

- (a) in section 32(1) by deleting “, retirement and his rights if any under the *Superannuation and Family Benefits Act 1938*.” and inserting instead —
“ and retirement. ”;
- (b) by repealing section 32(2);
- (c) in section 34(3) by deleting “contributor for pension, superannuation or benefits under the *Superannuation and Family Benefits Act 1938*.” and inserting instead —

“

Member of a superannuation scheme continued by section 29(c) or (d) of the *State Superannuation Act 2000*.

”

14 The *Universities Legislation Amendment Act 2005* s. 16 reads as follows:

“

16. Transitional provision

- (1) In this section —

“commencement day” means the day on which the *Universities Legislation Amendment Act 2005* comes into operation;

“deleted section 9(1)(g) or (h)” means the *Edith Cowan University Act 1984* section 9(1)(g) or (h) as those provisions were in effect immediately before commencement day;

“member” means a member of the Council of the Edith Cowan University.

- (2) The persons who, immediately before commencement day, were members under deleted section 9(1)(g) or (h) cease to be members on commencement day.

”.