SENATE NOTICE OF MEETING

Date: Tuesday, 29/03/2005
Time: 4:30 pm
Venue: Senate room, South Street Campus

Afternoon tea will be available in the foyer of the Senate Suite from 4pm. Would you kindly remember to wear your name badge?

After the meeting members are invited to have dinner in the Banksia Restaurant.

If you will be unable to remain for dinner, would you please advise the Assistant University Secretary, Samantha Summerton, by phone as soon as possible, so we can finalise catering numbers? Her number is 9360 6333.

If any Senate member would like additional information on any agenda item, or has a motion or changes to recommendations which could be included in a supplementary agenda, please contact me as soon as possible via eMail to JPease@murdoch.edu.au. If you intend to speak to a particular item, please let me know in advance; this will assist the Chancellor in running the meeting.

JOHN PEASE
GENERAL COUNSEL
& UNIVERSITY SECRETARY
21/03/2005

AGENDA

1. MEMBERSHIP
   1.1 A list of current Senate members is attached.
   1.2 A list of current Senate committees and working parties is attached.

2. APOLOGIES
   2.1 Judge Kate O’Brien, Mr Bob Pett, Sir William Heseltine, Mr Terry Budge, Margaret Banks and Mr Malcolm Macpherson.
   2.2 Any apologies received after circulation of the agenda will be reported to the meeting.

3. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)
   Members of Senate (and any member of staff presenting to Senate) must declare the nature, character and extent of any material personal interest in any matter included on the agenda.

PART A - MAJOR ISSUES

4. REPORT ON OUTCOME OF SENATE RETREAT & SENATE PRIORITIES FOR 2005
   The Chancellor will provide a brief, verbal update for Senate members on the outcomes of the Senate Retreat held 12-13 March, at the Esplanade Hotel, Fremantle.
At its meeting on 22/02/2005, the Senate noted the following draft priorities for 2005 to be settled after the Senate retreat:

- Maximising the University’s return on its assets, e.g. land, intellectual property. Establishing an appropriate endowment/investment policy.
- Engagement with external parties, i.e. the extent to which members of Senate can support and promote the University through their external contacts and networks.
- Identification of long-term goals for the University, including understanding the changing nature of higher education policy.

The Senate identified 17 areas of particular interest during the course of the retreat.

In accordance with Senate resolution S/71/2001 (as amended), Senate needs to finalise its priorities for 2005 and allocate responsibility for preparing discussion papers on them.

5. NATIONAL GOVERNANCE PROTOCOLS – DRAFT AMENDING LEGISLATION

The General Counsel & University Secretary has prepared an analysis of the draft legislation, together with a briefing paper outlining key issues (both attached). Senate needs to consider the issues identified and determine appropriate measures to ensure the timely disposition of the matter.

PART B - OTHER ISSUES FOR DISCUSSION

6. VICE CHANCELLOR’S REPORT

The Vice Chancellor will speak to his report to Senate, a copy of which is attached.

7. AUQA AUDIT STATUS REPORT

The PVC (Academic) will provide a brief, verbal update for Senate members in relation to preparations for the AUQA audit scheduled for 2006.

8. WOMEN’S SERVICE GUILD TRUST VARIATION

The Director, Development, seeks Senate approval for the University to execute a deed of variation, the effect of which will be to alter the membership of the Trust’s advisory board by replacing the Vice Chancellor’s of Curtin, ECU, UWA and Murdoch with the respective Pro Vice Chancellors (Research) (briefing paper attached).

9. DEPARTING MEMBERS OF SENATE

The March Senate meeting will be the last meeting attended by the following Senate members, whose respective terms will expire in the immediate future:

- Ms Pat Allen (term expires in April). Ms Allen has not contested the recent general staff member election).
- Dr Melanie Strawbridge (term expires in April). Pursuant to Senate resolution S/81/2004(e)(1), Senate will not be hold a Convocation election to fill this vacancy.
- Dr Michael McCall (term expires in May). Dr McCall is not eligible for re-appointment, having served 3 consecutive terms on Senate.

The Chancellor will move a vote of thanks to the retiring Senate members on behalf of the Senate.
PART C - OTHER ITEMS

The Chancellor will put the following as a single item for noting and for the approval/acceptance of any recommendations contained in them. Members of Senate may request that any of these items to be reserved for discussion.

10. CONFIRMATION OF PREVIOUS MINUTES

10.1 Confirmation of the minutes of the meeting held on 22/02/2005 (copy attached).

10.2 Note the attached report of action on resolutions passed at the previous meeting.

11. ACADEMIC COUNCIL

The minutes of the Academic Council meeting held on 16/03/2005 are attached. The minutes contain a number of recommendations to Senate, as summarised below. However, the Legislation Committee is yet to review the recommendations and they will be referred to Senate after this has occurred.

AC/30/2005 Amendments to the Professional Doctorate Regulations, the Master by Coursework Degree Regulations, the Diploma Regulations and the Certificate Regulations.

AC/32/2005 Amendments to the Academic Progress Rules for Coursework Masters Degrees.

AC/33/2005 Amendments to the Student Appeals Committee Regulations.

AC/34/2005 Amendments to the Bachelor Degree Regulations, the Diploma Regulations and the Master by Coursework Degree Regulations.

12. CHANCELLOR’S COMMITTEE

The minutes of the Chancellor’s Committee meeting held on 12/03/2005 are attached. The following items contain recommendations to Senate:

CC/03/2005 (i) Amendments to clause 14 of the Senate Charter and to the terms of reference for the Chancellor’s Committee relating to the General Counsel & University Secretary position.


CC/04/2005 Proposed new standing order 4.7A.

CC/05/2005 An amendment to the terms of reference for the Nomination Committee by adding the Director of Human Resources as a standing observer/invitee to the committee’s membership.

13. ENVIRONMENTAL COMMITTEE

The minutes of the Environmental Committee meeting held on 09/03/2005 are attached. The following items contain recommendations to Senate:

EC/01/2005 An amendment to the terms of reference for the Environmental Committee.

14. RESOURCES COMMITTEE

The minutes of the Resources Committee (by way of decisions by circulation made on 18/03/2005) are attached. The following items contain recommendations to Senate:
Subject to various conditions, approval to establish an incorporated entity to hold the majority shareholding in Paragen Pty Ltd and for Murdoch Ventures Pty Ltd to subscribe for and hold 50% of the issued capital in the proposed new company.

Subject to various conditions, standing approval for the incorporation of companies by the Murdoch WestScheme Enterprise Partnership, such companies to be vehicles for the commercialisation of intellectual property developed under funding by MWEP.

The Resources Committee also noted a report by the PVC (Resource Management) as required by Senate resolution S/12/2005.

15. OFFICIAL SEAL

In accordance with resolution S/54/2004, the General Counsel & University Secretary has provided a report detailing the documents, if any, to which the official seal has been affixed since the previous Senate meeting (copy attached).

16. SENATE MEETING DATES 2005

16.1 The Senate’s meeting dates for 2005 and respective closing dates for agenda items are attached.

16.2 Rather than the Senate holding one meeting at Rockingham and one in Mandurah each year, the Senate and Academic Council will alternate between each location each year.

   In 2005 the Senate’s June meeting will be at Rockingham and the Academic Council’s March meeting will be at Mandurah. This will be reversed in 2006.

17. MATTERS FOR INFORMATION

A copy of any newspaper or other articles of relevance or interest is attached.

In accordance with clause 13.6 of the Senate Charter, the General Counsel & University Secretary will distribute a quarterly summary of governance developments by the end of March. The summary will be distributed separately from the agenda papers.
Date: Tuesday, 29/03/2005
Time: 4:30 pm
Venue: Senate room, South Street Campus

AGENDA

1. MEMBERSHIP
2. APOLOGIES
3. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)

PART A - MAJOR ISSUES

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5. NATIONAL GOVERNANCE PROTOCOLS – DRAFT AMENDING LEGISLATION

PART B - OTHER ISSUES FOR DISCUSSION

6. VICE CHANCELLOR’S REPORT
7. AUQA AUDIT STATUS REPORT
8. WOMEN’S SERVICE GUILD TRUST VARIATION
9. DEPARTING MEMBERS OF SENATE

PART C - OTHER ITEMS

10. CONFIRMATION OF PREVIOUS MINUTES
11. ACADEMIC COUNCIL
12. CHANCELLOR’S COMMITTEE
13. ENVIRONMENTAL COMMITTEE
14. RESOURCES COMMITTEE
15. OFFICIAL SEAL
16. SENATE MEETING DATES 2005
17. MATTERS FOR INFORMATION
AGENDA ITEM 5

SENATE BRIEFING PAPER

Date: 19 / 03 / 2005  Referred to Senate: directly.
Subject: National Governance Protocols - Universities Legislation Amendment Bill 2005 (WA) (“Bill”)
From: General Counsel & University Secretary  Division: Vice Chancellory

Purpose:
To seek instructions from Senate regarding issues of substance and/or principle arising out of the drafting of the Bill and, giving the timing, to ask Senate to delegate responsibility for reviewing the Bill ‘line by line’ and signing off on its final content to the Legislation Committee.

Background & summary:
The University must comply with the Federal Government’s National Governance Protocols in order to qualify for increased funding under section 33-15 of the Higher Education Support Act 2003. The percentage increase that applies for 2005 is 5%. The value of the increase for 2004 (2.5%) was approximately $1.19M.

Compliance with a number of the Protocols requires amendments to the Murdoch University Act 1973 (WA) (“Act”), the most significant of which relates to the size and composition of Senate (cf. resolutions S/81/2004 and S/82/2004, copy attached). The Joint Request for Legislative Reform (“Joint Request”) was the product of a working party established by WA’s 4 public universities to address changes to enabling legislation required by the Protocols.

In 2004 the Federal Minister had capacity to “deem” the University compliant, provided it had done everything reasonably possible and the only outstanding items were beyond its control, i.e. the need for the WA Government to amend the Act. The Minister does not have this power in 2005 and therefore the amendments to the Act must be passed and implemented by 31/08/2005 in order for the University to be compliant with the Protocols and, accordingly, qualify for the 5% increase.

After many discussions with senior representatives of the WA Minister for Education, the draft Bill was finally provided on 14/03/2005. If the Bill is to be passed and implemented before 31 August, it must be approved by Cabinet and introduced into Parliament ideally in April.

The General Counsel & University Secretary will be meeting with the inter-university working party on 22/03/2005 to discuss the overall response of the 4 public universities. However, there is insufficient time for the Legislation Committee to review the Bill ‘line by line’ and refer it to Senate for approval.

The General Counsel & University Secretary has prepared a detailed analysis of the draft Bill, clause by clause, and a copy is attached. As the analysis reveals, the draft Bill raises a number of issues, most relating to style and drafting, but there are also a number of substantial issues in respect of which Senate needs to provide clarification and/or confirmation of instructions.

Giving the timing restrictions that exist, the General Counsel & University Secretary recommends that, subject to Senate clarifying and/or confirming instructions in relation to the issues of substance detailed below, it otherwise delegates authority to the Legislation Committee to review and approve the draft Bill. This will enable the matter to be finalised in early April with less difficulty than trying to arrange an extraordinary meeting of Senate.

The substantial issues in respect of which clarification and/or confirmation of instructions are as follows:

- Proposed new sub-section 12(1)(e) – elected Convocation members: The effect of the drafting is that the two elected Convocation positions on Senate must be elected from within the existing members of Convocation. New sub-section 12(2) also applies to exclude current employees or students from eligibility for election. As noted in the analysis, the transitional provisions exempt Carolyn Jakobsen from this exclusion. However, future elected Convocation representatives will not be able to be current students of the University. The General Counsel & University Secretary considers that this achieves the Senate’s intention (cf. Senate resolution S/125/2004 – copy attached), but seeks confirmation.

- Existing sub-section 12(6) – quorum for meetings: The draftsperson notes that Senate may want to consider reducing the existing quorum required for meetings, i.e. 8, given that the size of Senate has reduced from 25 to 19. Based on a proportionate reduction commensurate with the percentage reduction in Senate, the quorum should be reduced to 6.

- Proposed new sub-section 12(1)(g) – co-opted members: Consistent with the existing provision, Senate has flexibility whether or not to co-opt less than 3 members. However, as noted by the draftsperson, there must be at least one co-opted member in order to maintain a maximum of external members in accordance. The
General Counsel & University Secretary does not recommend any change to the drafting as it maintains flexibility and it is a matter for Senate’s Nominations Committee to remain aware of membership composition and the requirements of the Protocols.

**Proposed new section 15A – removal for breach of duty:** The draft legislation provides only for removal of a member in breach of the new specified duties. It makes no provision for Senate to take a less severe approach, e.g. censure or suspension. The Joint Request had included a request for a tiered approach to sanctions. As noted in the analysis, the General Counsel & University Secretary recommends that Senate maintains its original request, albeit in a compromised form, namely, permit Senate, by statute to prescribe alternative sanctions for breach of any specified duties in the Act or its Code of Conduct. By conferring this power by statute, the Government will retain a supervisory role because any statutes must be approved by EXCO.

**Proposed new Schedule 1 – duties for Senate members:** The draftsperson has ignored the request of the 4 universities that the duties be drafted to mirror the equivalent sections in the Commonwealth Corporations Act, opting instead to mirror provisions in the Statutory Corporations (Liability of Directors) Act 1996 (WA), which do not currently apply to the universities. With regard to the drafting of the specific duties, the General Counsel & University Secretary maintains that it would be preferable to word them using the formulae from the Corporations Act to provide certainty when advising on what any particular duty means. Whilst this is a preferred position, ultimately it is not an issue that should be permitted to delay enactment of the Bill and therefore compliance with the Protocols.

**Proposed duty 1(c) – acting in the best interest of the university:** As currently drafted, a member of Senate need only give priority to the interests of the University where those interests conflict with the interest of the constituency from which he or she was elected. This is a fundamental misunderstanding of the nature of the obligations of a member of a governing body who is elected or appointed from a constituency whose interests may be at odds with those of the body. The provision should be drafted in the same terms as specified in the Protocol.

**Proposed Schedule clause 1(2) – Statutory Corporations (Liability of Directors) Act:** As expected, the Government has not excluded the operation of this legislation. The effect is that, in addition to the specified duties, members of Senate will have a fiduciary duty to the University in the same terms as the general fiduciary duty that a director owes to his or her company. The General Counsel & University Secretary understand that the view taken is that there may be duties that are not covered by the specific duties prescribed by the Protocols that should continue to apply. Whilst removing the additional layer of duty is a preferred position, ultimately it is not an issue that should be permitted to delay enactment of the Bill and therefore compliance with the Protocols.

**Proposed Schedule clause 7 – protections for Senate members:** As currently drafted, the Bill provides that apart from removal, a Senate member who breaches one of the specified duties has no further liability. This is a misunderstanding of how the Corporations Act duties work and also of what appears to be the implicit intention of the Protocols. As noted in the analysis, on one view of the current drafting, this is a good result for individual members of Senate. However, the General Counsel & University Secretary does not believe that this is the intention of the Protocols, nor is it in the best interests of the University as whole. If a member breaches one of the duties, the University should be at least in a position to consider taking legal action to recover losses flowing from that breach.

Assuming that Senate accepts this principle, the Bill is also deficient insofar as it does not provide the protections available to directors of companies who are exposed to civil liabilities for breach of duty, specifically the business judgment rule, the deeming provision that flows from reasonable reliance on reports and information provided by others and the power of the court to excuse civil liability where a director acts reasonably and honestly and the circumstances dictate that protection being granted.

**Issues & alternatives considered:**

Failure to resolve issues in the drafting of the Bill by early August will severely jeopardise the prospect of the amendments being enacted and therefore the University complying with the Protocols. To the extent that compromises can be achieved by negotiations with the WA Government, these will be ratified by the Legislation Committee.

**Linkage to the University’s strategic plan:**

Compliance with the Protocols is essential for the University to qualify for increased Federal Government funding.

**Risk management considerations:**

If the Bill is not enacted and implemented by 31/08/2005, the University will be non-compliant with the Protocols. The Federal Minister has no power to grant ‘deemed’ compliance in 2005.
SEG has not considered the proposal because::

Date of SEG consideration: Not applicable

this is a matter that does not concern the University’s executive. It is solely a governance matter.

Who has been consulted:

<table>
<thead>
<tr>
<th>Chancellor</th>
<th>Vice Chancellor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro Chancellor</td>
<td>Members of the inter-university working party</td>
</tr>
</tbody>
</table>

Attachments:

☐ No attachments

☒ The following documents are attached:

- Analysis of the Universities Legislation Amendment Bill 2005 (WA)

Further information is available at:

Not applicable

Who to contact & his/her contact details to discuss the matter before the meeting:

John Pease, General Counsel & University Secretary – (08) 9360 6826 or J.Pease@murdoch.edu.au

Recommendation:

Senate resolves as follows:

(i) Subject to and within the parameters of the following points of clarification, to authorise the Legislation Committee to review, negotiate as necessary and provide final sign-off of the drafting of the Universities Legislation Amendment Bill 2005 (WA). In conferring this authorisation, the Senate recognises that compromises may need to be made and accepts that Legislation Committee will seek to achieve the best outcome for the University bearing in mind that the Bill must be enacted and implemented prior to 31/08/2005 in order for the University to comply with the National Governance Protocols.

(ii) To confirm and clarify resolution S/125/2004, specifically, candidates for election as an elected Convocation member of Senate must be a member of Convocation, but cannot be an existing member of the academic or general staff or a current student of the University.

(iii) The drafting of the Bill should include or address the following issues:

(a) The quorum for meetings should be reduced in the same proportion as the reduction in the size of Senate, i.e. reduce the current quorum of 8 to 6.

(b) Senate should retain the flexibility of co-opting up to 3 members of Senate.

(c) Senate should have the option to impose alternative sanctions for breach of duty, e.g. censure and/or suspension.

(d) The duties for members of Senate ideally should be drafted to mirror the equivalent provisions in the Commonwealth Corporations Act, rather than the Statutory Corporations (Liability of Directors) Act 1996 (WA).

(e) Proposed clause 1(1)(c) of the Schedule should stipulate that when acting as a member of Senate, members must always act in the best interests of the University as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her.

(f) The operation of the Statutory Corporations (Liability of Directors) Act 1996 (WA) should ideally be excluded on implementation of the specific duties for members of Senate.

(g) Members of Senate who breach any of the specified duties, in addition to removal as a member, should also incur civil liability to the same extent that a director of a company who breaches the duties in sections 180-183 of the Corporations Act is exposed to civil liability. This includes the defences and protections afforded by sections 180(1), 189 and 1318 of the Corporations Act.

Signed:

JOHN PEASE
GENERAL COUNSEL & UNIVERSITY SECRETARY
SIZE AND COMPOSITION OF SENATE
Resolution S/81/2004
[Meeting date: 16-8-2004]

The National Governance Protocols require that the membership of Senate be reduced from 25 to no more than 22 members, and do not allow the Guild President to remain a member *ex officio*. The meeting had before it a summary of the responses to the confidential questionnaire sent to all Senators inviting their views on the number of Senators there should be for each category of membership. This found that two thirds of Senators supported a Senate of 17-19 members.

The Chancellor moved that Senate support a membership of 19. Dr Macbeth moved an amendment of 22 members, which led to a wide-ranging discussion. Arguments expressed in favour of the larger size included the industry knowledge of internal members; Senate works effectively with the current size; larger numbers allow a greater range of skills and perspectives; it is the simplest model to implement; and there would still be a clear majority of lay Senators.

In favour of a smaller Senate, others argued that governance trends are towards smaller boards; the Senate poll results should be followed, given the large number of Senators unable to attend this meeting; a smaller Senate is more likely to focus on what is Senate business; Senate membership should not be about representation; and alternative avenues are available to gain wider views. A number of Senators favoured having a position on Senate for a postgraduate research student.

The amendment was defeated, on the casting vote of the Chancellor (who did not exercise a deliberative vote). The original motion was then carried, and a working party established.

**RESOLVED:**

(a) to request the WA Government to amend section 12 of the *Murdoch University Act* so as to reduce the maximum size of the Senate from 25 to 19 members, comprised in accordance with the attached table. The amendment should also:

1. dispense with the separate categories of appointed members in paragraphs 12(1)(b), (g) and (i) of the *Murdoch University Act* and in their place create a single category of members appointed by the Governor; and

2. include transitional provisions to the effect that the members of Senate at the time the amending legislation comes into force will continue to be members with terms expiring on the dates that apply to the respective member's existing appointment or election. The transitional provisions also need to stipulate an expiry date applicable to the position on Senate currently nominated by the Minister (paragraph 12(1)(b)).

(b) pending the enactment and implementation of amending legislation consequent upon (a) of this resolution, Senate will adopt the principle of attrition so that its membership reduces to the size and composition approved in (a);

(c) to authorise the General Counsel to complete the inter-university Joint Request for Legislative Amendments in a way that accurately reflects Senate's intention in this resolution;

(d) to amend the *Election Regulations* by inserting a new clause 20 (as follows):

**Transitional provision relating to elections**

20. Where it considers it necessary or desirable to do so, the Senate may, by a majority of the members present, resolve to defer calling an election for any of the elected positions to the Senate pending the enactment and implementation of legislation to amend section 12 of the *Murdoch University Act* 1973 in compliance with the National Governance Protocols.

(e) pursuant to regulation 20 of the *Election Regulations* and consistent with Senate's commitment to complying with the National Governance Protocols:

1. to defer calling elections for the following categories of elected Senate members:
   - the elected academic member that fell vacant on 1 August 2004; and
   - any vacancies that arise in relation to Convocation members, the result of which would be to maintain more than two members from this category.
(2) to note that the Returning Officer will not hold a ballot for the two academic positions in respect of which nominations have already been called, and authorises the Returning Officer to re-open nominations for the elected academic position that falls vacant on 28 October 2004 and thereafter hold a ballot for that vacancy.

(3) part (e) of this resolution has effect until 31 August 2005 or the enactment and implementation of an amendment to the Murdoch University Act consequent upon this resolution, whichever occurs first.

(f) to invite the student and Convocation Senators to form a working party, chaired by Ms Gaines, to advise Senate on how the two student and two alumni Senators should be elected, including consideration of whether one of these positions should be for a research postgraduate.

NATIONAL GOVERNANCE PROTOCOLS
Resolution S/82/2004
[Meeting date: 16-8-2004]

The Higher Education Support Act 2003 includes a requirement that all universities adhere to new National Governance Protocols for Higher Education Providers if they are to receive an increase in their basic grant from the Commonwealth. Universities have to show compliance with the Protocols by 31 August 2004 if they are to qualify for the 2.5% Commonwealth Grant Scheme funding increase in 2005. The amount at stake for the University next year is $1.95 million. The amounts are larger in subsequent years: 5% of the basic grant in 2006 and 7.5% in 2007.

The agenda papers contained a checklist containing the Governance Protocols and setting out how the University complies with each of them; a proposed joint submission by WA universities on changes to their Acts; recommendations from the Governance Working Party; and a paper on duties of Senators. The National Governance Protocols require the Murdoch University Act to be amended to specify the duties of Senators and sanctions for breaches of these duties. The Working Party took the approach that the amendments to the Act concerning duties of Senators should mirror the provisions in the federal Corporations Act. This will enable advice to be provided on what the provisions actually require, by reference to case law. It was noted that Senators are already subject to similar requirements under the WA Statutory Corporations (Liability of Directors) Act; the Working Party suggested the University be excluded from coverage by that Act in order to avoid any inconsistency as to duties. It also suggested a process of graduated penalties (censure, suspension, removal from office).

Senate noted the compliance checklist, and

RESOLVED:
to recommend to the State Government that the Murdoch University Act be amended as set out in the attached document Joint Request for Legislative Amendments.

LEGISLATION COMMITTEE
Resolution S/125/2004
[Meeting date: 22-11-2004]

Elections to Senate by Convocation

Senate had invited Legislation Committee to bring forward legislative amendments so that students not be eligible for election to Senate by Convocation. The Committee considered a paper from the General Counsel. His advice was that the Murdoch University Act needs to be amended to give effect to this change, as s.12(1)(f) of the Act (Senate includes "three persons elected by Convocation in the manner prescribed by Statute") gives Senate authority to determine the electoral process, not the electorate. It was also noted that the provision did not require that those Senators elected "by" Convocation must also be members of Convocation. This appears to be an historical legacy from the inception of the University, when Senate could appoint to these positions prior to the establishment of Convocation in 1980. On the recommendation of the Committee, Senate

RESOLVED:
(a) to seek the following amendments to the Murdoch University Act:
   - s.12.(1)(f): insert "and from" before "Convocation"
   - s.12(2): add "(c) A person who is a student of the University is not eligible for election under paragraph (f) of subsection (1) of this section."

(b) to authorise the General Counsel to liaise with the W.A. Government to endeavour to include these amendments as part of the package of legislative amendments required by the National Governance Protocols.
<table>
<thead>
<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
</tr>
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<tbody>
<tr>
<td><strong>Part 4 — Murdoch University Act 1973</strong></td>
<td></td>
<td></td>
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<tr>
<td>20. The Act amended</td>
<td></td>
<td>The comments that follow are based on the following assumptions:</td>
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<tr>
<td>The amendments in this Part are to the <em>Murdoch University Act 1973</em>.</td>
<td></td>
<td>✓ The Parliamentary Draftsperson took into account the Joint Request for Legislative Amendments, including the General Counsel’s paper regarding duties; and</td>
</tr>
<tr>
<td>[* Reprinted as at 26 February 1999. For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table L, p. 260 and Act No. ]</td>
<td></td>
<td>✓ DEST has reviewed the draft <em>Universities Legislation Amendment Bill 2005 (WA)</em> and has confirmed that its provisions meet the requirements of the Protocols.</td>
</tr>
<tr>
<td>21. Section 12 amended</td>
<td></td>
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<tr>
<td>(1) Section 12(1) and (2) are repealed and the following subsections are inserted instead —</td>
<td>Protocol #5 <em>The size of the governing body must not exceed 22 members.</em></td>
<td>The cumulative effect of the amendments to section 12 is to reduce the size of the Senate to 19 members.</td>
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<tr>
<td></td>
<td><strong>Protocol #5</strong></td>
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<tr>
<td>&quot;(1) The membership of Senate shall consist of —</td>
<td></td>
<td>No issue</td>
</tr>
<tr>
<td>(a) the persons holding or acting in the office of Chancellor and of Vice-Chancellor respectively;</td>
<td><strong>Protocol #3</strong> <em>Other than the Chancellor, Vice Chancellor and the Presiding Member of the Academic Board(s) each member must be appointed or elected ad personam.</em></td>
<td>The deletion of paragraph 12(1)(c) removes the Guild President as an ex officio member of Senate in compliance with the Protocol. As per Murdoch’s request, the Minister’s nominee is also removed.</td>
</tr>
<tr>
<td>[As current s. 12(1)(a), note that current s. 12(1)(b) and (c) not re-enacted.]</td>
<td></td>
<td>No issue</td>
</tr>
<tr>
<td>(b) 3 persons elected by and from the members of the full-time academic staff of the University in the manner prescribed by Statute;</td>
<td>As per Murdoch’s request, the number of elected academic staff members has been reduced from 4 to 3.</td>
<td></td>
</tr>
<tr>
<td>[As current s. 12(1)(d) but with one less person.]</td>
<td></td>
<td>No issue</td>
</tr>
<tr>
<td>(c) one person elected by and from the full-time officers and servants of the University who are not members of the full-time academic staff of the University in the manner prescribed by Statute;</td>
<td>As per Murdoch’s request, no change to the elected general staff member.</td>
<td></td>
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<tr>
<td>[As current s. 12(1)(d).]</td>
<td></td>
<td>No issue</td>
</tr>
<tr>
<td>(d) 2 persons elected by and from the students in the manner prescribed by Statute;</td>
<td>As per Murdoch’s request, no change to the elected student members.</td>
<td></td>
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<tr>
<td>[As current s. 12(1)(e).]</td>
<td></td>
<td>No issue</td>
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<tr>
<td>Draft legislation wording</td>
<td>Protocol requirement</td>
<td>Comment</td>
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| (e) 2 persons elected by Convocation from the members of Convocation in the manner prescribed by Statute;  
[As current s. 12(1)(f) but with one less person. | | As per Murdoch’s request, the number of elected Convocation members has been reduced from 3 to 2. |
| | | **No issue** |
| As requested by you on 24.2.05 a restriction has been inserted so that the election is made from members of Convocation only. However, this affects proposed subsection (2) in relation to the members of Convocation who could fall into the categories of persons mentioned in proposed ss (2).  
Currently, Convocation may elect persons from outside Convocation to ensure compliance with s. 12(2)(a).  
Please review your recent instruction. If Convocation is to elect from its members, some restrictions on the categories of those members who may be elected should be inserted in this paragraph to achieve compliance with the policy of proposed ss (2) and current s. 12(2)(a).  
For transitional purposes, please also advise if the current members (Ms Bowra and Ms Jakobsen) are also members of Convocation. | | The insertion of “from the members of Convocation” satisfies Senate resolution S/125/2004.  
The General Counsel’s understanding of Senate’s requirements in this regard is that Convocation must elect from within the Convocation members. However, current members of staff or current students of the university, who also happen to be members of Convocation, are not eligible to be elected.  
On the basis of this understanding, clause (2) adequately defines restrictions that should apply to this category of elected member.  
Ms Bowra and Ms Jakobsen are both members of Convocation. Ms Jakobsen is also a current postgraduate student. Transitional clause 22(7) exempts her from the exclusion of students being elected by Convocation. |
| | | **Senate needs to clarify its requirements** |
| (f) 6 members, not being persons who are otherwise eligible to be elected to the Senate under this subsection, appointed by the Governor;  
[As current s. 12(1)(g) with some changes. Note that current s. 12(1)(f) not re-enacted.] | | As per Murdoch’s request, the existing categories of membership provided for in paragraphs 12(1)(b), (g) and (i) have been merged into a single category comprising 6 members. |
| | | **No issue** |
| (g) up to 3 persons, not being full-time members of the academic staff of the University or full-time officers or servants of the University or any other tertiary education institution, as are co-opted to serve as members of the Senate by an absolute majority of the other members. | | As per Murdoch’s request, no change to the co-opted members.  
Further comments regarding the “up to 2” note are below. |
<p>| | | <strong>No issue</strong> |</p>
<table>
<thead>
<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
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<tbody>
<tr>
<td>[As current s. 12(1)(j). This will give a Senate of between 16 and 19 members. However, your request of 24.2.05 to change Draft 1 from “3 persons” to “up to...3 persons” has implications for proposed subsection (2) and the “external” majority requirement. See notes below.]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| (2) A person who is a member of the staff or otherwise engaged by the University or a student is not eligible to be a member of the Senate under subsection (1)(e), (f) or (g). [This would achieve the “external” majority requirement (see the fourth sentence of Protocol 5) only if there is at least one member under proposed ss (1)(g). If there are no members under proposed ss (1)(g) there would be only 8 external members out of 16 members i.e. not a majority. Further instructions please. Also see notes concerning Convocation at proposed ss (1)(e).] | | As noted above, the General Counsel’s understanding of Senate’s requirements in this regard is that Convocation must elect from within the Convocation members. However, current members of staff or current students of the university, who also happen to be members of Convocation, are not eligible to be elected. The General Counsel is unsure of what the reference to “or otherwise engaged by” is intended to capture. This is an internal matter for the University to ensure that at all times it has at least one current co-opted member. 

**No issue, subject to Senate confirming re Convocation** |
| (2a) Of the members of the Senate —  
(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  
(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).  
[Modelled on NSW Charles Sturt Uni. Act s. 9(5) in relation to the second sentence in Protocol 5 with the modification in the last 2 lines as requested on 24.2.05.]  
[You advised on 9.3.05 that the Commonwealth does not want the last sentence in Protocol 5 (concerning members of Parliament) in the legislation.] | Protocol #5  
There must be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at senior level in the public or private sector).  

DEST has previously confirmed (via eMail messages dated 22/04/2004 & 08/06/2004) that the percentage of external/internal membership and the required experience/qualifications criteria need not be enshrined in the legislation as it will assess compliance by reference to actual membership at the time of certification.  
Whilst the relevant drafting is not an issue, the General Counsel suggests that including these criteria in the legislation will impose undue inflexibility should DEST’s requirements change in future and is preferably left to the university to address in the terms of reference for its Nominations Committee.  

**Recommend removing from the Bill** |
### Draft legislation wording

<table>
<thead>
<tr>
<th>Protocol requirement</th>
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<tbody>
<tr>
<td>Senate needs to clarify whether or not it wants to adjust the existing quorum requirement (i.e. 8 members) giving that its maximum size has reduced from 25 to 19.</td>
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<tr>
<td>Where the various provisions stipulate “on and from commencement day”, it is perhaps suggestive that the terms of the respective appointments/election commence on that date.</td>
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<tr>
<td>The transitional provision should spell out that the continuation is subject to any pre-existing expiry dates with regard to appointment/election. Failure to make this clear may result in non-compliance with Protocol #6 (requirement for staggered terms).</td>
<td></td>
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<tr>
<td>There is an apparent omission in the text (highlighted).</td>
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<tr>
<td>Further drafting requested</td>
<td></td>
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<tr>
<td>The transitional provision regarding 12(1)(b) may need to be adjusted depending on what the present incumbent decides.</td>
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</tr>
<tr>
<td>If the present incumbent wants to retain her Senate role, the transitional provision will need to deem that she becomes a member appointed under new section 12(1)(f), filling the vacancy that will otherwise occur on 18/05/2005 – suggest that this also be deemed her date of appointment. The provision is fine as presently drafted if the present incumbent prefers not to maintain her role as a member of Senate.</td>
<td></td>
</tr>
<tr>
<td>Needs to be clarified</td>
<td></td>
</tr>
<tr>
<td>No issue, subject to clarifying that existing commencement date(s) apply to the deemed position</td>
<td></td>
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<tr>
<td>Draft legislation wording</td>
<td>Protocol requirement</td>
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</tbody>
</table>
| (4) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(d) continue in office as members of the Senate under new section 12(1)(b) on and from the commencement day.  
[Instructions are that currently there are 3 not 4 such members.]                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                               | No issue, subject to clarifying that existing commencement date(s) apply to the deemed position                                                                                                                                 |
| (5) The person who, immediately before commencement day, was a member of the Senate under repealed section 12(1)(da) continues in office as a member of the Senate under new section 12(1)(c) on and from the commencement day.                                                                                                                                                                                       |                                                                                                                                                                                                                                               | No issue, subject to clarifying that existing commencement date(s) apply to the deemed position                                                                                                                                 |
| (6) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(e) continue in office as members of the Senate under new section 12(1)(d) on and from the commencement day.                                                                                                                                                                                        |                                                                                                                                                                                                                                               | No issue, subject to clarifying that existing commencement date(s) apply to the deemed position                                                                                                                                 |
| (7) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(f) continue in office as members of the Senate under new section 12(1)(e) on and from commencement day even though one of those persons is a student on the commencement day.  
[Instructions are that by commencement day there will be 2 not 3 members elected by Convocation. Instructions needed on whether the remaining members (Ms Bowra and Ms Jakobsen) are also members of Convocation (if proceeding with instruction to require these members to be elected by and from Convocation).] |                                                                                                                                                                                                                                               | As noted above, both Ms Bowra and Ms Jakobsen are members of Convocation. The wording of this clause covers the latter, who is also a current student of the University.  
No issue, subject to clarifying that existing commencement date(s) apply to the deemed position                                                                                                                                                                               |
| (8) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(g) or (i) continue in office as members of the Senate under new section 12(1)(f) on and from the commencement day.                                                                                                                                                                                                 |                                                                                                                                                                                                                                               | No issue, subject to clarifying that existing commencement date(s) apply to the deemed position                                                                                                                                 |
| (9) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(j) continue in office as members of the Senate under new section 12(1)(g) on and from the commencement day.  
[Please check the above carefully in relation to the instructions provided for the transitional arrangements for the Murdoch Senate. If correct, this will provide for 18 members on the commencement day out of a possible range of 16 to 19. I] |                                                                                                                                                                                                                                               | No issue, subject to clarifying that existing commencement date(s) apply to the deemed position                                                                                                                                 |

There will be compliance because, depending on the present incumbent of the section 12(1)(b) position, either she will be deemed a 12(1)(f) member or the University will appoint another member to this category giving a total membership of 19.

While Ms Jakobsen continues as an elected Convocation member, of the 19 members, 8 (42%) will be internal and 11...
### Draft legislation wording

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>understand that there will be 10 out of 18 “external” members at commencement in view of Ms Jakobsen’s being a student and a member of Convocation.</strong></td>
<td>(58%) will be external. After her terms expires, the balance reverts to 7 (37%) internal and 12 (63%) external. The Senate’s existing external members result in the University being fully compliant with the financial/commercial expertise requirement of 12(2a).</td>
</tr>
</tbody>
</table>

#### 23. Section 15 amended

**1.** After section 15(3)(c) the following paragraph is inserted —

> “(cb) is, or becomes, disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001 of the Commonwealth.”

- **Protocol #3**
  - **A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a director of a company or managing corporations under Part 2D.6 of the Corporations Act 2001 (C’th)**

  The drafting omits the inclusion of “from acting as a director of a company”. However Part 2D.6 of the Corporations Act merely refers to disqualification from managing corporations.
  
  On the assumption that DEST has reviewed and approved this wording, there would not appear to be any issue.

**2.** After subsection 15(3) the following subsection is inserted —

> “(3a) A member of the Senate who is removed from office by the Senate under section 15A is not eligible to be a member again until —

  (a) in the case of a member elected by the students, one year has elapsed since the removal; or

  (b) in the case of any other member, 3 years have elapsed since the removal “.

  [Proposed s.15(3a) addresses your request of 24.2.05 that removed members be ineligible for “one term”.]

The drafting of this provision achieves the Senate’s request with regard to members removed for breach of a duty.

**3.** After section 15 the following section is inserted —

> “15A. Removal of Senate members for breach of certain duties

  (1) The Senate may remove a member of the Senate from office for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3.

  (2) The removal from office may be effected only at a meeting of the Senate of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was

- **Protocol #3**
  - **The higher education provider (with the exception of those subject to the Corporations Act) must have a requirement that the governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above included in**

  Insofar as it goes, this clause is acceptable in providing the power to remove by a two-thirds vote of Senate.

However, a number of issues arise, namely:

- **Clause 15A(3) appears to suggest that if there is a vacancy in any category of membership at the time of considering a motion to remove, the two-thirds majority...**
<table>
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<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
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<tbody>
<tr>
<td>(3) Despite section 12(6), the removal from office may be effected only if the motion for removal is supported by at least 2/3 of the total number of members of the Senate for the time being.</td>
<td>its enabling legislation.</td>
<td>is satisfied by two thirds of the total number of members then comprising the Senate. An eMail communication from DEST suggests that it is two thirds of the total membership, i.e. 19, irrespective of how many positions may be vacant at the time. Has DEST clarified this?</td>
</tr>
<tr>
<td>(4) The motion for removal 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.</td>
<td>DEST confirmation &amp; further drafting required</td>
<td></td>
</tr>
<tr>
<td>(5) If the member to whom the motion for removal 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.</td>
<td>No issue</td>
<td></td>
</tr>
<tr>
<td>(6) The Senate cannot remove a member of the Senate from office for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 except in accordance with this section.</td>
<td>No issue</td>
<td></td>
</tr>
<tr>
<td>[Modelled on NSW Charles Sturt Uni Act s. 24G which provides for some natural justice requirements (given that there seems to be no appeal from the decision of the Senate to remove a member, whether or not that decision is made fairly).]</td>
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<tr>
<td>(7) A person must not vote on any question relating to the person’s removal from office by the Senate for the breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3, or be present while</td>
<td>No issue</td>
<td></td>
</tr>
<tr>
<td>Draft legislation wording</td>
<td>Protocol requirement</td>
<td>Comment</td>
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<tr>
<td>the matter is being considered at a meeting.</td>
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<tr>
<td>[Although the NSW universities legislation e.g. NSW Charles Sturt Uni Act Sch. 3 cl. 5 (7) gives a person accused of breaching a duty voting rights re questions on whether or not the duty has been breached and whether the member should be disqualified, the Commonwealth has requested that the members not take part in voting or discussions.]</td>
<td></td>
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<tr>
<td>(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 commencement of Part 4 of the Universities Legislation Amendment Bill 2005.</td>
<td></td>
<td>It would appear that the drafter is picking up section 19 of the Statutory Corporations (Liability of Directors) Act 1996 (WA) (“SCLDA”). This provision does not currently apply to the universities which are not subject to Part 3 of that legislation. However, the protection provided by the draft provision is fine as far as it goes. Further comments are detailed below regarding the need for further protections.</td>
</tr>
<tr>
<td>[As per NSW Charles Sturt Uni Act s. 45.]</td>
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<tr>
<td>(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.</td>
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<tr>
<td>(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.”</td>
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<tr>
<td>[Re (9) and (10) compare Statutory Corporations (Liability of Directors) Act s. 19.]</td>
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</tr>
<tr>
<td>25. Section 17A inserted</td>
<td>Protocol #3</td>
<td></td>
</tr>
<tr>
<td>After section 17 the following section is inserted —</td>
<td></td>
<td></td>
</tr>
<tr>
<td>“17A. Disclosure of interests</td>
<td></td>
<td></td>
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<tr>
<td>Schedule 1 Division 2 has effect.”</td>
<td></td>
<td></td>
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<tr>
<td>Protocol #3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).</td>
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</tr>
</tbody>
</table>
26. **Schedule 1 inserted**

   After section 34 the following Schedule is inserted —

<table>
<thead>
<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
</tr>
</thead>
</table>
| **“Schedule 1 — Senate members**** [s. 15A, 17A]** | **Protocol 3**
The higher education provider must have the duties of the members of the governing body and sanctions for the breach of these duties specified in its enabling legislation. All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the higher education provider. Duties of members must include the requirements to: |
<p>| <strong>Protocol #3</strong> |
| (a) the duty to at all times act honestly in the performance of the functions of a member of the Senate, whether within or outside the State; | <strong>Protocol #3</strong> |
| (b) act in good faith, honesty and for a proper purpose; | The clause (as drafted) is a reproduction of sub-section 9(1) of the SCLDA. The paragraph of the Protocol is based on section 181(1) of the Corporations Act, an extract of which is attached. The SCLDA has never been the subject of judicial consideration and therefore precisely what its provisions mean is a matter for hypothesis. On the other hand, the equivalent provision from the Corporations Act has been the subject of many decisions over the years enabling the provision of less equivocal legal advice to members of Senate as to what the duty encompasses. Furthermore, the 4 universities requested that the duties be expressed by reference to the equivalent Corporations Act provisions and to proceed down a different path at this late stage runs the risk of a divisive and prolonged debate of what should or should not be included. The General Counsel recommends that Senate maintains its original request. <strong>To be redrafted by reference s181(1) of the Corporations Act</strong> |</p>
<table>
<thead>
<tr>
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</table>
| (b) the duty to at all times exercise the degree of care and diligence in the performance of the functions of a member of the Senate, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Senate’s circumstances; | **Protocol #3**  
(c) exercise appropriate care and diligence; | The clause (as drafted) is a reproduction of section 10 of the SCLDA. The paragraph of the Protocol is based on section 180(1) of the Corporations Act, an extract of which is attached. Whilst the difference in wording between the two is not material, for the reasons identified in relation to Sch. 1 clause 1(1)(a), it is preferable that the duty be drafted by reference to the Corporations Act provision.  
The General Counsel recommends that Senate maintains its original request.  
*To be redrafted by reference s180(1) of the Corporations Act* |
| (c) the duty to at all times act in the best interests of the University and, in the event of a conflict between the interests of the University and the interests of any person appointing or electing a member of the Senate, to give priority to the interests of the University;  
*New (c) has been inserted because the Commonwealth expressed a desire to see the duties referred to in Protocol cl. 7.5.20(a) set out in the legislation. This is what I think that clause means.* | **Protocol #3**  
(a) act always in the best interests of the higher education provider as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her; | The drafting appears to misunderstand the nature of membership of a governing body, in particular that of an elected member.  
The priority applies *at all times*, not only where there is conflict between the interests of the university and the respective member’s constituency (cf. *Bennetts v Board of Fire Commissioners of NSW* (1967) 87 WN (Pt.1) 307.  
The General Counsel is concerned that, as presently drafted, the provision supports an argument that the long-accepted principle as to the nature of a member’s duty has been changed.  
*To be redrafted to make it clear that the duty applies at all times, not just when there is conflict* |
| (d) the duty to not, whether within or outside the State, make improper use of information acquired by virtue of the position of member of the Senate to gain, directly or indirectly, an advantage for any person or to cause detriment to the Senate; | **Protocol #3**  
(d) not improperly use their position to gain an advantage for themselves or someone else; and | Clauses (d) and (e) (as drafted) are a reproduction of sections 11 and 12, respectively of the SCLDA. To the extent that each refers to causing “detriment to the Senate”, this is a misconception. The reference should be to causing “detriment to the University”.  
The Corporations Act equivalent are sections 183(1) and 182(1), respectively, an extract of which is attached. Whilst the difference in wording between the two is not material, for the reasons identified in relation to Sch. 1 clause 1(1)(a), it is preferable that the duty be drafted by reference to the |
### National Governance Protocols – Draft Legislation Amendment Bill

#### Draft legislation wording

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<td></td>
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<tr>
<td></td>
<td>(e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).</td>
<td></td>
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<td></td>
<td>Protocol #3</td>
<td></td>
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<td></td>
<td>(2) Nothing in subclause (1) or section 15A or 17A affects the operation of the Corporations (Liability of Directors) Act 1996. (2) modelled on Western Australian Land Authority Act 1992 Sch. 1A cl. 2(3).</td>
<td>Corporations Act provision. The General Counsel recommends that Senate maintains its original request.</td>
</tr>
<tr>
<td></td>
<td>Protocol #3</td>
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<td>(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.</td>
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<td></td>
<td>Protocol #3</td>
<td></td>
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<tr>
<td></td>
<td>(3) Voting by interested members</td>
<td>The drafting is close enough to section 195 of the Corporations Act, dealing with restrictions on voting by directors of public companies.</td>
</tr>
<tr>
<td></td>
<td>Protocol #3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division 2 — Disclosure of interests</td>
<td>To be redrafted to address issues identified &amp; to provide for standing notice</td>
</tr>
<tr>
<td></td>
<td>Protocol #3</td>
<td></td>
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<tr>
<td></td>
<td>(2) A member of the Senate who has a material personal interest in a matter being considered or about to be considered by the Senate must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Senate.</td>
<td>Recommended that this be accepted</td>
</tr>
<tr>
<td></td>
<td>Protocol #3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2) Nothing in subclause (1) or section 15A or 17A affects the operation of the Corporations (Liability of Directors) Act 1996. (2) modelled on Western Australian Land Authority Act 1992 Sch. 1A cl. 2(3).</td>
<td>To be redrafted by reference s183(1) and 182(1) of the Corporations Act. In any event change Senate to University</td>
</tr>
<tr>
<td></td>
<td>Protocol #3</td>
<td></td>
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<td></td>
<td>(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.</td>
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<td>Protocol #3</td>
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**Corporations Act**

The General Counsel recommends that Senate maintains its original request.

**To be redrafted by reference s183(1) and 182(1) of the Corporations Act. In any event change Senate to University**

**Recommended that this be accepted**

**To be redrafted to address issues identified & to provide for standing notice**

**To be redrafted to address issues identified**

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**Division 2 — Disclosure of interests**

**Protocol #3**

(e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).
1. **Draft legislation wording**

<table>
<thead>
<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) must not vote whether at a meeting or otherwise —</td>
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<tr>
<td>(i) on the matter; or</td>
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<td></td>
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<tr>
<td>(ii) on a proposed resolution under clause 4 in respect of the matter, whether relating to that member or a different member; and</td>
<td></td>
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<tr>
<td>(b) must not be present while —</td>
<td></td>
<td></td>
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<tr>
<td>(i) the matter; or</td>
<td></td>
<td></td>
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<tr>
<td>(ii) a proposed resolution of the kind referred to in paragraph (a)(ii), is being considered at a meeting.</td>
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</table>

2. **4. Clause 3 may be declared inapplicable**

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

<table>
<thead>
<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) specifies the member, the interest and the matter; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(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.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. **5. Quorum where clause 3 applies**

(1) Despite section 12(6), 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 7 members of the Senate are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

   [May need to adjust this number if s. 12(6) is amended to change the quorum.]

(2) The Minister may deal with a matter in so far as the Board cannot deal with it because of subclause (1).

<table>
<thead>
<tr>
<th>Draft legislation wording</th>
<th>Protocol requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Draft legislation wording</td>
<td>Protocol requirement</td>
<td>Comment</td>
</tr>
<tr>
<td>---------------------------</td>
<td>----------------------</td>
<td>---------</td>
</tr>
<tr>
<td>the Minister being able to make the declaration rather than exercise the Senate’s power. This is also more consistent with the Protocol which refers to “appropriate procedures for that purpose similar to those for public companies”. The reference to Board is obviously a drafting error.</td>
<td></td>
<td>To be redrafted by reference to section 196</td>
</tr>
</tbody>
</table>

6. **Minister may declare clauses 3 and 5 inapplicable**

   (1) The Minister may 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.

   The provision needs to be clarified, for example, the circumstances in which the Minister may make such a declaration is not clear.

   If it is intended that he or she can do so of his own volition, it would be an inappropriate interference with the sovereignty of the University as a separate body corporate. On the other hand, if this is intended to work in a similar way as section 196 of the Corporations Act, it should flesh out who can seek the declaration and set some parameters around the exercise of the declaration.

   The current drafting should also detail that the declaration can apply to specified Senate members or generally.

   **Needs re-drafting**
### Draft Legislation Wording

<table>
<thead>
<tr>
<th>Protocol requirement</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Division 3 — Protection</strong></td>
<td></td>
</tr>
<tr>
<td>7. Protection from liability for breach of duty</td>
<td></td>
</tr>
<tr>
<td>(1) An action does not lie against a person who is or was a member of the Senate for a breach or purported breach of a duty mentioned in this Schedule.</td>
<td></td>
</tr>
<tr>
<td>(2) The protection given by subclause (1) applies even if the person has a corresponding duty under another law.</td>
<td></td>
</tr>
<tr>
<td>[e.g. at common law, in equity or say under the Statutory Corporations (Liability of Directors) Act. I need your instructions on this one way or the other.]</td>
<td></td>
</tr>
<tr>
<td>(3) Despite subclause (1), the University is not relieved of any liability that it might have for another person having done anything as described in that subclause.</td>
<td></td>
</tr>
<tr>
<td>[See notes about Division 3 at clause 10.]</td>
<td></td>
</tr>
<tr>
<td>[Please note the insertion of Division 3 in response to the Commonwealth’s request for a protection from liability provision. Following perusal of the following comments you may be inclined to instruct me to remove it.</td>
<td></td>
</tr>
<tr>
<td>Mr Emmanuel of the Commonwealth interprets the first and second sentences of Protocol 3 clause 7.25 as relating to all decisions and actions taken by a member and not just to the performance of their “duties”.</td>
<td></td>
</tr>
</tbody>
</table>

When preparing Draft 1 I read the Corporations Law provisions searching for the so-called “safeguards, exemptions and protections” as these had not been specified in the Protocol or the instructions. The provision for relief from liability for contravention of civil penalty provision was not relevant because there is no civil penalty provision for a breach of the “new duties”. Nor will it be an offence to breach the “new duties”. The general power of a court to grant relief is not relevant because the only effect of a breach of a “new duty” is (according to your instructions) being liable to be removed from office. It is up to the Board, not a court, to make the decision and in doing so the Board is at liberty to have regard to all the circumstances of the case and exercise its discretion accordingly (subject to the 2/3 majority rule). Also note the “safeguards” at proposed s. 10AA(9) and (10) concerning directions.

I also noted that none of the 4 University Acts in question contained a provision along the lines of what we now call in WA “protection from liability for wrongdoing”. I discussed this with the Parliamentary Counsel, Mr Calcutt, who was of the view that such a provision would have a much wider application than the subject of the protocols. Such a provision would affect existing liabilities and duties, and decisions would have to be made (by the universities) as to the categories of person to be protected, from whose suit they would be protected and the extent of the protection. This would be a matter

Based on the drafter’s notes that were included with the equivalent provisions to be inserted in the Curtin University Act, it would appear either that DEST comments have been misinterpreted or that the drafter has misunderstood the ramifications of a breach of the equivalent Corporations Act provisions.

Members of Senate already owe a fiduciary duty to the University in similar terms to that owed by directors to companies, breach of which exposes them to potential civil liability. This results from the general common law position and also section 5 of the SCLDA.

A reading of the Protocols, especially the drafting by reference to sections 180-183 of the Corporations Act and the reference to “such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the Corporations Act 2001 (Cth).”

The General Counsel agrees with the drafter’s comment that there has perhaps been confusion in some respects by DEST and that is perhaps a reflection of the fact that a non-lawyer appears to have drafted the Protocols. Be that as it may, the intention is, with respect, readily apparent.

Sections 180-183 of the Corporations Act establish duties, the breach of which give rise to civil liabilities, i.e. a company director who breaches a specified duty can be sued personally for damages or other common law or equitable remedies. This is in addition to the criminal and quasi-criminal liabilities that apply.

The effect of the current drafting is that a Senate member cannot be sued for a breach of one of the specified duties. Whilst this is obviously to the benefit of the individual members of Senate, in the General Counsel’s opinion it is not in the interest of the University as a whole, nor is it consistent.
extending beyond the subject of the Cabinet decision for this Bill and thus would require Cabinet approval of any changes proposed by the universities.

The fact that the other States’ legislation had existing provisions of a protection/indemnification kind is not a reasonable ground for requiring WA universities to have such provisions as part of this exercise. Indeed, I have difficulty in understanding the purpose of legislation that creates new duties in an Act containing a general protection provision. Is it intended that the members will be more liable, or less liable, than they were before the amendments are made? In any event I note that the other States do not actually provide that the members cannot be sued for breach of duty. The protections relate to acts or omissions done in good faith in performing functions under the relevant Act.

It appears to me that when the Protocol was formulated there was some confusion between directors’ duties (and the effects thereof) and the protections usually given to people who perform functions under an Act.

Having considered all the above when preparing Draft 1, I did not think it necessary to have an “extra” protection provision relating to breaches of the “new duties” because the only consequence of a breach had been specified in the amendments i.e. liable to be removed from office.

However, in view of the Commonwealth’s position, I have drafted this provision to make clear that there are no other consequences of a breach of a “new duty”.

I suggest that each of the universities review the provision carefully in relation to implications that it may have in their particular cases.

with the intention of the Protocols. Furthermore, DEST may regard the clause as non-compliant with the Protocols.

In the General Counsel’s opinion, a breach of the “new duties” should have the same consequences for a member of Senate as it does for a director who breaches one of the Corporations Act duties, namely in addition to the Senate having power to remove the offending member, he or she may also be sued.

Assuming that this principle is accepted, then the defences previously identified need to be included, namely:

- A business judgment protection for decisions made honestly, in good faith and for a proper purpose. This should apply only in relation to the duty described at clause 1(1)(b). For example, see section 188(2) of the ANU Act which provides for such protection.
- A deeming provision relating to bona fide reliance on information or advice provided by others (cf. section 189 of the Corporations Act).
- The power of a court to relieve civil liability where a person has acted honestly and reasonably and the circumstances dictate relief (cf. section 1318 of the Corporations Act and section 20 of the SCLDA).

The drafting notes appear to suggest that DEST has indicated that the general protections, etc should extend to all actions of Senate members, not only to alleged breaches of the ‘new duties’. This is entirely consistent with the interpretation suggested above. It is not suggested that there should be no personal liability (which is how clause 7 is presently drafted). Nor does this appear to be what DEST is suggesting. What is required are appropriate defences to any civil claim relating to an alleged breach of duty – either one of the ‘new duties’ or any general fiduciary duty. This should not require reference – as the drafter notes – to Cabinet because this requirement was always contained in the Protocols. It is not something new.
<table>
<thead>
<tr>
<th>Applicable section under existing Act</th>
<th>Expiry date of existing appointment</th>
<th>Applicable section under proposed amendment</th>
</tr>
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<tbody>
<tr>
<td>12(1)(a)</td>
<td>24/11/2006</td>
<td>12(1)(a)</td>
</tr>
<tr>
<td>12(1)(a)</td>
<td>Ex officio</td>
<td>12(1)(a)</td>
</tr>
<tr>
<td>12(1)(b)</td>
<td>N/A</td>
<td>Deleted</td>
</tr>
<tr>
<td>12(1)(c)</td>
<td>25/11/2005</td>
<td>Deleted</td>
</tr>
<tr>
<td>12(1)(d)</td>
<td>09/11/2005</td>
<td>12(1)(b)</td>
</tr>
<tr>
<td>12(1)(d)</td>
<td>25/09/2006</td>
<td>12(1)(b)</td>
</tr>
<tr>
<td>12(1)(d)</td>
<td>28/10/2007</td>
<td>12(1)(b)</td>
</tr>
<tr>
<td>12(1)(da)</td>
<td>20/04/2005</td>
<td>12(1)(c)</td>
</tr>
<tr>
<td>12(1)(e)</td>
<td>31/12/2005</td>
<td>12(1)(d)</td>
</tr>
<tr>
<td>12(1)(e)</td>
<td>31/12/2005</td>
<td>12(1)(d)</td>
</tr>
<tr>
<td>12(1)(f)</td>
<td>31/12/2005</td>
<td>12(1)(e)</td>
</tr>
<tr>
<td>12(1)(f)</td>
<td>31/12/2005</td>
<td>12(1)(e)</td>
</tr>
<tr>
<td>12(1)(f)</td>
<td>05/04/2005</td>
<td>N/A</td>
</tr>
<tr>
<td>12(1)(g)</td>
<td>28/06/2005</td>
<td>12(1)(f)</td>
</tr>
<tr>
<td>12(1)(g)</td>
<td>10/09/2006</td>
<td>12(1)(f)</td>
</tr>
<tr>
<td>12(1)(g)</td>
<td>18/05/2005</td>
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<tr>
<td>12(1)(g)</td>
<td>15/05/2006</td>
<td>12(1)(f)</td>
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<td>12(1)(g)</td>
<td>N/A</td>
<td>12(1)(f)</td>
</tr>
<tr>
<td>12(1)(i)</td>
<td>31/05/2007</td>
<td>12(1)(f)</td>
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<td>12(1)(j)</td>
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<td>12(1)(g)</td>
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<tr>
<td>12(1)(j)</td>
<td>22/05/2006</td>
<td>12(1)(g)</td>
</tr>
<tr>
<td>12(1)(j)</td>
<td>31/12/2005</td>
<td>12(1)(g)</td>
</tr>
</tbody>
</table>

1 This category of membership will cease to exist under the new model. Transitional provisions will need to provide for the existing incumbent to be deemed to be an appointed member on enactment of the amending legislation.

2 By resolution S/81/2004 dated 16/08/2004, the Senate adopted the principle of attrition so that, where necessary, its membership reduces to the size and composition requested in the amending Act.

3 The vacancy that will arise on 20/02/2005 will be filled.

4 This Senate member is currently an existing student of the University which will create issues in terms of proposed new sub-section 12(2) of the Act. I suggest that section 12(2) remain as is, but the transitional provisions provide that the sub-section applies only to persons elected, appointed or co-opted, as the case may be, after the amending Act comes into effect.

5 The vacancy that will arise on 05/04/2004 will not be filled. See note 2 above.

6 I anticipate that the Senate will request the this member be re-appointed for another term.

7 This member of Senate is ineligible for re-appointment and therefore there will be another vacancy in this category after 18/05/2005. This vacancy may be filled by the transitional provisions deeming the existing section 12(1)(b) member as an appointed member.
Date: 16/03/2005  
Referred to Senate: directly.

Subject: Deed of Variation to the Trust Deed for the Women's Services Guild Trust

From: Vicky Dodds  
Division: Vice Chancellory

Purpose:
To seek Senate approval for the University to execute a deed of variation, the effect of which will be to alter the membership of the Trust's advisory board by replacing the Vice Chancellor's of Curtin, ECU, UWA and Murdoch with the respective Pro Vice Chancellors (Research).

Background & summary:
The Women's Services Guild Trust was set up using funds provided by the Women's Services Guild Inc upon the closure of that organisation in 1997.

The purposes of the Trust are:
- to endow a post graduate scholarship to be known as "The Women's Service Guild Research Scholarship" available for students of the Universities; and
- to promote and support research in medicine and other disciplines, including (but not limited to) education, economics, the environment, peace studies and history, to be conducted by or in conjunction with a university or public hospital and which is intended to be of benefit in particular to women and children in Western Australia.

The Trust currently holds in excess of $600,000 and is in the third year of funding a 3 year scholarship for a Murdoch student at $20,000 a year.

The Trust is managed by Murdoch University as the trustee and the Advisory Board comprises the Vice Chancellors of the 4 public universities and a person appointed by the Vice Chancellors to represent Princess Margaret Hospital. The Vice Chancellors also appoint an independent Chair of the Advisory Board. The current independent Chair is Ms Dianne Davidson.

Issues & alternatives considered:
Over the past two years it has been difficult to make arrangements for the Advisory Board to meet and consider the scholarship candidates due to the work commitments of the respective Vice Chancellors and, accordingly, the members have approved that the Trust Deed be amended so that the Pro Vice Chancellors (Research), or their nominees, from each of the Universities make up the Advisory Board.

Linkage to the University's strategic plan:
The Trust supports the University's Strategic Plan in providing support for post graduate research.

Risk management considerations:
A Risk Management assessment has been conducted which identified the main risk being the potential for this change to impact on Tax Act regulations relating to the Trust. The ATO has provided written confirmation that the proposed changes will not affect Tax Act provisions relating to the Trust. At this stage, the General Counsel advises that the ATO approval permits substitution of the PVCs (Research) for the VCs, but further ATO approval is required to permit the PVCs (Research) to nominate an alternate.

SEG has not been consulted regarding the proposal  
Date of SEG consideration:

SEG has not been consulted regarding the proposal because:
The proposal was considered by the Vice Chancellors of the 4 Universities as members of the Advisory Committee which has the power to recommend such changes to Murdoch University as the trustee.

Who has been consulted:
Vice Chancellors of the 4 Universities which make up the Advisory Committee
The Independent Chair of the Advisory Committee
Australian Taxation Office
General Counsel & University Secretary

Attachments:

☑ No attachments

The following documents are attached:

- Risk Assessment
- Letter from the ATO dated 16/12/2004
- Draft deed of variation

Further information is available at:

Who to contact & his/her contact details to discuss the matter before the meeting:
Vicky Dodds, Director of Development, 9360 7607, v.dodds@murdoch.edu.au

Recommendation:

Senate resolves as follows:

(i) To authorise the University, as trustee of the Women's Services Guild Trust, to execute the attached draft deed of variation altering the membership of the Trust's Advisory Board

Signed:

[Signature]

VICKY DODDS
DIRECTOR OF DEVELOPMENT

Supported:

[Signature]

ANDRIS STEBLOVIČS
ACTING VICE CHANCELLOR
Attention: Ms Vicky Dodds
Women's Services Guild Trust
Murdoch University
South Street
Murdoch WA 6150

Dear Ms. Dodds

Subject: Amended Trust Deed

We acknowledge receipt of your letter dated 9 November 2004 wherein you sought confirmation that the proposed amendments to clauses 6.1a and 6.2a in the Trust Deed for the Women's Services Guild Trust would not affect your current status as a deductible gift recipient (DGR).

You are advised that the proposed amendments are satisfactory and will not affect your DGR status.

Thank you for your co-operation in this matter.

This advice is general in nature and is not binding on the Commissioner. However you are assured that:

➢ If you rely on this advice and, in doing so you make an honest mistake, we will not charge you a penalty, although we may ask you to pay interest on any underpaid tax.

➢ If something in this advice is misleading and you make a mistake as a result, we will not charge you a penalty or interest on any underpaid tax.

If you require any further assistance in regards to this matter please do not hesitate to contact David Oulaghan on 08 9268 5995. Please quote reference number 4354530.

Yours faithfully

Mark Konza
DEPUTY COMMISSIONER OF TAXATION

[Signature]

Per (David Oulaghan)
<table>
<thead>
<tr>
<th>No</th>
<th>Development and Foundation Risk Description</th>
<th>Risk Consequence</th>
<th>Risk Likelihood</th>
<th>Initial Risk Ranking</th>
<th>Less : Risk Reduction Controls in place</th>
<th>Residual Risk Ranking</th>
<th>Further Action Required?</th>
<th>Action Officer &amp; Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Womens Services Guild of WA Trust - Variation to Trust Deed</td>
<td>Moderate</td>
<td>Unlikely</td>
<td>Low</td>
<td>The ATO has been requested to, and has provided written confirmation that the proposed changes will not impact on the Trust's status in relation to the relevant portions of the Tax Act</td>
<td>Low</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>That the Amendment to the Trust Deed to replace the University Vice Chancellors with the Pro Vice Chancellors (Research) would preclude the Trust from the relevant provisions of the Tax Act</td>
<td>Moderate</td>
<td>Unlikely</td>
<td>Low</td>
<td></td>
<td>Low</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>That the one or more of the Pro Vice Chancellors (Research) of the Universities acts inappropriately as a member of the Advisory Board</td>
<td>Moderate</td>
<td>Unlikely</td>
<td>Low</td>
<td>There are 4 PVCs and 2 other external members advising the Trustee on actions relating to the Trust and Murdoch University as Trustee will consider the recommendations of the Advisory Board and has authority to act to meet the Purposes of the Trust as described in the Deed</td>
<td>Low</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Conflicts of interest are not disclosed</td>
<td>Moderate</td>
<td>Unlikely</td>
<td>Low</td>
<td>Murdoch University 'Conflicts of Interest' Policies/Procedures/Forms are in place and the Advisory Board will have a standing agenda item to disclose any conflicts of interest</td>
<td>Low</td>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

*Andrew Broadfield*

*16/3/05*
Deed of variation of the Women’s Service Guild Trust Deed

BY

MURDOCH UNIVERSITY

LEGAL & GOVERNANCE
South Street  Tel: (08) 9360 6826
MURDOCH WA 6150  Fax: (08) 9360 6847
This Deed is made on [ ] April, 2005.

Parties:
This deed is made by:
MURDOCH UNIVERSITY of South Street, Murdoch, Western Australia (“Trustee”).

INTRODUCTION:
(a) Murdoch is a body corporate established pursuant to section 4 of the Murdoch University Act 1973 (WA).
(b) The Trust was established pursuant to the Trust Deed.
(c) Murdoch has from the time of execution of the Trust Deed up to and including the date of this Deed continuously held office as Trustee and has not done anything so as to prejudice or preclude itself from exercising the Trustee’s powers and authority contained in the Trust Deed.
(d) Clause 12.1 of the Trust Deed permits the Trustee, amongst other things, from time to time by deed wholly or in part revoke, add to or alter the trusts declared by the Trust Deed.
(e) In accordance with clause 12.2 of the Trust Deed, the Trustee has been notified by the Deputy Commissioner of Taxation that the amendments proposed to be effected by this Deed will not affect the current status of the Trust as a deductible gift recipient.

OPERATIVE PROVISIONS
1. DEFINITIONS AND INTERPRETATION
1.1. Definitions
The following definitions apply to this Deed, unless the context otherwise requires:
1.1.1. “Deed” means this deed.
1.1.2. “Party” means a party to this Deed.
1.1.3. “Trust” means the Women’s Service Guild Trust constituted by the Trust Deed, as varied by a deed of variation dated 13/08/1999.
1.1.4. “Trust Deed” means a deed of trust made on or about 14/10/1997 by the Trustee, as trustee.
1.2. Rules for interpreting this Deed
The following rules apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply:
1.2.1. Headings are for convenience only and do not affect interpretation.
1.2.2. A reference to recital, introduction, clause, schedule or annexure is a reference to a recital, introduction, clause, schedule or annexure, respectively, of or to this Deed.
1.2.3. A recital, introduction, clause, schedule or annexure forms part of this Deed.
1.2.4. A reference to this Deed or to any other instrument includes any amendment, variation, novation or replacement of them.
1.2.5. Where an expression is defined in this Deed, another part of speech or grammatical form of that expression will have a corresponding meaning.
1.2.6. A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, authority, trust, State or Government and vice versa.

1.2.7. A reference to any party means and includes a reference to that party and its executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), transferees and permitted assigns and, if a body corporate, its directors, officers, agents, servants and employees.

1.2.8. A reference to anything (including a right, obligation or concept) includes each part of it.

1.2.9. A singular word includes the plural, and vice versa.

1.2.10. Words denoting any gender include every other gender.

1.2.11. If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

2. VARIATION OF THE TRUST DEED

2.1. Variation

The Trustee declares that the Trust Deed is varied in each of clauses 6.1(a) and 6.1(b), as follows (additions in bold and underlined, deletions in strike-out):

“6.1 The members of the Advisory Board shall be:

6.1(a) the Pro Vice Chancellor (Research) or equivalent Vice Chancellor of each of the Universities, ex officio;

...”

6.2(a) Each Pro Vice Chancellor (Research) or equivalent Vice Chancellor may appoint a senior research member of the staff of his or her university to be an alternate Advisory Board member in place of the Pro Vice Chancellor (Research) Vice Chancellor for any period that the Pro Vice Chancellor (Research) Vice Chancellor is absent from Western Australia. The Pro Vice Chancellor (Research) Vice Chancellor may from time to time in writing revoke or alter that appointment.”

2.2. Effective date of this Deed

The Trust Deed is varied and this Deed becomes effective on the last day this Deed is executed by all Parties.

2.3. Rest of Trust Deed unaltered

In all other respects the terms of the Trust Deed remain unaltered.

EXECUTED as a deed by the parties:

EXECUTED under seal by MURDOCH UNIVERSITY in accordance with clause 1 of Statute 1 and Senate resolution S54/2004

Signature of Chancellor/Pro-Chancellor/Vice-Chancellor

Signature of General Counsel

Full name

Full name
Date of meeting: Tuesday, 22/02/2005

Present:
Em. Prof Geoffrey Bolton (Chair) Dr Jim Macbeth
Prof John Yovich (Vice Chancellor) Mr Malcolm Macpherson
Ms Pat Allen Dr Michael McCall
Assoc Prof Stuart Bradley Mr Daniel Narbett
Ms Janice Bowra Judge Kate O’Brien
Mr Terry Budge Ms Barbara Whelan
Assoc Prof Nick Costa Ms Alison Gaines
Sir William Heseltine Dr Melanie Strawbridge
Ms Carolyn Jakobsen

Secretary: John Pease

Apologies: Garry Hunt, Bob Pett, Dick Lester & Mal Bradley

Official attendees:
Mr Ian Callahan (PVC – Resource Management)
Prof Gary Martin (PVC – Strategy)
Prof Andris Stelbovics (PVC – Research)
Prof Jan Thomas (PVC – Academic)
Prof Kateryna Longley (PVC – Regional Development)

Observers:
Prof Jim Reynolds, Prof Yianni Attikiouzel, Assoc Prof Arnold Depickere,
Assoc Prof Michael Campion (NTEU), Ms Julie Keene, Mr Michael Conry, Mr
Darren Munday, Mr Craig Spence, Prof Stefan Pallister, Mr Andrew Burchfield,
Ms Vicki Dodds, Mr John Pike, Mr Nathan Giles.

1. MEMBERSHIP
   The Senate welcomed Barbara Whelan and Daniel Narbutt to their first meeting as members of Senate.

2. APOLOGIES
   Garry Hunt, Robert Pett, Malcolm Bradley and Richard Lester tendered their apologies.

   2.1 Sir William Heseltine sought leave of absence during March as he will be overseas.

   Resolved: Pursuant to Senate standing order 2.2, leave of absence during the month of March,
   S/01/2005 2005 is granted to Sir William Heseltine.

3. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)
   Nil.
4. STATE OF THE UNIVERSITY ADDRESS

In accordance with resolution S/71/2001, the Vice Chancellor presented his State of the University address, speaking to a PowerPoint presentation. Key points were:

Higher Education reforms

As the sector moves forward, more and more federal funding will be attached to competitive pools, with an increasing number of private and public providers which further increases competition for funds. DEST will also be focussing on reform in relation to teaching only universities, voluntary student unionism and course attractiveness.

Education

➤ Murdoch performed very well in the DEST Course Experience Questionnaire, registering 88.1% compared to the national level of 81.5%.
➤ Murdoch has filled all places, which was an increased number compared to previous years and has also increased its share of the first preference pool. These achievements have been made in an environment where applications to all universities have declined.
➤ There is a strong demand for some units but others are not as readily subscribed to. Careful analysis of the course mix and answering demand will be a high priority. There was discussion about the criteria on which course offerings would be reviewed and decisions made. There are a complex matrix of issues to be addressed, but Murdoch will need to be proactive in its approach.

Research

Murdoch’s academic performance was very successful in 2004, with research income from all sources showing growth.

The Shanghai Institute of Higher Education ranked Murdoch in the 400-500 band, of the top 500 universities in the world and the Melbourne Institute of Applied Economics & Social Research ranked Murdoch as 14 out of 38 in Australia in its index of international standing of Australian universities.

Management

Highlights include achievement of a surplus budget and various commercial ventures. However there is a need for careful investment planning into the future when returns will be significant.

University issues that need to be addressed in the long term:
➤ International students, as the market continues to become more aggressive;
➤ Capital and maintenance programme for the University’s infrastructure; and
➤ A long term investment strategy.

5. SENATE PRIORITIES

Senate reviewed the draft list of priorities for 2005, noting that these will be discussed and settled at the upcoming Senate retreat on 12-13 March.

Senate also noted that resolution S/71/2001 tends to restrict given its requirement for Senate to identify its priorities at the first meeting of each year when, as in 2005, the intention is to discuss and agree priorities at the retreat.
Resolved: (i) To adopt the following as a preliminary list of priorities for consideration at the Senate’s retreat:

- Maximising the University’s return on its assets, e.g. land, intellectual property. Establishing an appropriate endowment/investment policy.
- Engagement with external parties, i.e. the extent to which members of Senate can support and promote the University through their external contacts and networks.
- Identification of long-term goals for the University, including understanding the changing nature of higher education policy.

(ii) To amend paragraph (e) of resolution S/71/2001 as follows (changes highlighted):

(e) at that meeting, Senate identify commence discussions with a view to identifying any key strategic issues which it wishes to discuss during the coming year, and allocate responsibility for preparing discussion papers on them.

6. VICE CHANCELLOR’S REPORT

The Vice Chancellor spoke to his report, a copy of which was included in the agenda. Significant matters noted include:

- DEST confirming Murdoch’s compliance with the National Governance Protocols;
- Accreditation being obtained for the nursing programme being delivered at Peel;
- Murdoch has received capital funding for the Peel Campus for 3rd straight year.

Resolved: (i) That Senate expresses its warm congratulations to each of Professors Richard Hobbs, Michael Durey and Andris Stelbovics on their achievements noted in the Vice Chancellor’s report.

(ii) Senate expresses its sincere condolences to the family of Lisa Jones, who was lost to the recent tsunami tragedy, noting that the Chancellor will write to her family on its behalf to express this sentiment.

7. AUDIT AND RISK MANAGEMENT COMMITTEE ANNUAL REPORT

7.1 Sir William Heseltine presented the Audit & Risk Management Committee’s annual report. His comments by way of overview included:

- Whilst there were some initial delays on actioning audit items, all but one had been actioned by year’s end, with the outstanding item the subject of an agreed action plan.
- Members of the Committee intend to undertake a professional development course in April and are looking to co-opt a further member to add to the Committee’s skill base.
- On behalf of the Committee, he thanked the members of the Internal Audit team for their endeavours during the year and for their helpful recommendations in audit reports.

Resolved: To receive the annual report of the Audit & Risk Management Committee.

7.2 Sir William Heseltine also spoke to Murdoch’s draft 2005 strategic risk management plan. Points of significance during his comments and discussion included:

- Two of the top three 2004 strategic risks have been downgraded from High Risk to...
Low Risk.

- IT remains one of the top strategic risks. This is an area that needs careful analysis based on needs and resources and will be the subject of an IT review, the recommendations from which may require Senate support based on their nature.
- Typographical mistakes and the paragraph commencing “The natural consequence of this …” in relation to the first strategic risk identified for 2005 need to be removed.
- Murdoch’s staff play a significant role in achieving and maintaining student satisfaction which affects our ability to maintain our 5-star rating.

... pink

**Resolved:**

1. That Senate approve the draft strategic risk management plan annexed, subject to amending it to show IT, the third top strategic risk identified, as a “High” risk.
2. The strategic risk management plan, as finalised, be forwarded to the Office of Policy and Planning for coverage in the next Planning process.
3. “Further Action Required” be taken by the prescribed Action Officers for any “High” or “Extreme” residual risk items.
4. The Senior Executive Group monitor on a quarterly basis the progress being taken on the top 3 strategic risks.
5. The Audit and Risk Management Committee monitor in their quarterly meetings the progress being taken on the top 3 strategic risks.
6. The strategic risk management plan, as finalised, be subject to an annual review by the Senior Executive Group and then the Audit and Risk Management Committee and the results reported to Senate.

8. **AUQA AUDIT**

Prof Jan Thomas, PVC (Academic) spoke to her paper on Murdoch’s preparations for the upcoming AUQA audit. During the course of discussion, she confirmed that there is a detailed timeline for educating all areas. The following roles for members of Senate were identified:

- Ideally, a member of Senate should be on the working party preparing for the audit.
- One member of Senate should be on the assessment panel for the Whole of University Review planned for late 2005.
- Members of Senate will be asked to provide input on Murdoch’s portfolio, in particular in relation to governance matters. They will also be asked to review the draft portfolio.
- Members of Senate should acquire a good working knowledge/understanding of the portfolio contents, including an awareness of identified weaknesses and strategies in place to address them.
- Taking the initiative and visiting Schools and other areas of interest.
- The review panel and also the AUQA panel will interview a number of members of Senate. Areas of particular interest will be decision-making processes, governance processes.
9. **APPROVAL OF THE UNIVERSITY'S ANNUAL REPORT**

Senate reviewed the draft annual report attached to the agenda and noted:

- It would be beneficial to include details about the size of the Murdoch communities, e.g. number of students, Alumni, etc.
- The information in the Course Completion Probability table was confusing and the information is better represented in the Student Progression Rate Table. The Vice Chancellor will confirm whether or not the inclusion of the Course Completion Probability table is a requirement of the Office of the Auditor General, and if not, it will be removed.

... green

Resolved: To approve the draft annual report (copy attached) subject to amending the content to:
(a) include information in relation to the size of Murdoch's communities; and
(b) remove the Course Completion Probability table if it is not required by the Office of the Auditor General.

10. **RESIGNATION OF THE UNIVERSITY SECRETARY**

Mr Andrew Bain has recently resigned as University Secretary, a position he has held since March 1999. He was Secretary of the Senate throughout this period.

In addition to his roles within the Secretary’s office (1973-1980), School of Human Communication (1980-1983), and Student Records (1983-1985), Andrew was also Officer in Charge, Secretary’s Office (1985-1991) when his title changed to Assistant Registrar. In 1992 he was appointed to the position of Deputy Registrar; however this did not become permanent until July 1995. The position of Deputy Registrar became redundant in August 1998 and Mr Bain was appointed to the position of University Secretary in 1999.

... pink

Resolved: To record a vote of thanks to Andrew Bain in the terms attached, noting that the Chancellor will write to him to convey the Senate’s message.

11. **MINUTES**

Senate confirmed the minutes of the meetings held on 22/11/2004 and 23/12/2004. It also noted the report of action to implement the resolutions of Senate.

In response to a question regarding asbestos removal, Mr Ian Callahan, PVC (Resource Management), advised that the asbestos removal work has been completed. However, the building contractors are still on site to attend to rectification of unanticipated building structural issues that were discovered during the asbestos removal process.

12. **DECISIONS BY CIRCULATION**

Senate noted the following matters which had been approved by the Summer Committee by circulation. The date of effect was 13/12/2004, when a majority of members had voted in support.

**Peel campus:**

Resolved: To authorise the Vice Chancellor to enter into the ground lease for the Peel campus in the terms negotiated by the General Counsel.
(ii) To authorise the General Counsel to request the Governor to proclaim that the leased premises be ‘University Land’ under section 24 of the Murdoch University Act.

South Street campus:

Resolved: (i) To authorise the General Counsel to take all action that he considers necessary, including requesting the amendment of the Governor’s order in council gazetted on 18/12/1992 and/or the existing Crown Grant, to ensure that the terms on which the South Street campus land is vested in the University are consistent with the terms of the Murdoch University Act.

S/130/2004

13. ACADEMIC COUNCIL

Senate noted the minutes of the meeting of the Academic Council held on 02/02/2005 and resolved in accordance with the recommendation of the Academic Council as follows:

Resolved: To amend regulation 65 of the Bachelor Degree Regulations in the terms attached.

S/08/2005

14. AUDIT & RISK MANAGEMENT COMMITTEE

Senate noted the minutes of the meeting of the Audit & Risk Management Committee held on 01/02/2005. All recommendations are dealt with at item 7.

15. CHANCELLOR’S COMMITTEE

Senate noted the minutes of the meeting of the Chancellor’s Committee held on 08/02/2005. There was a discussion regarding the recommended changes to the Statement of Governance Principles, the drafting of which was referred back to the committee for further consideration.

Resolved: (i) The vacancy in the University Secretary position be filled by merging the existing General Counsel and University Secretary positions, noting that the executive’s intention is to create a new, Assistant University Secretary position to provide administrative support to the merged position. A copy of the position description for the merged position is attached.

S/09/2005

(ii) Any decision of the Vice Chancellor relating to the continued existence of the General Counsel & University Secretary position, the appointment of persons to that position and the termination of employment of persons in that position be referred to the Chancellor’s Committee, rather than Senate as a whole, for ratification.

(iii) The General Counsel be authorised to amend the Statement of Governance Principles to reflect the changes implemented by this decision, e.g. replace references to ‘University Secretary’ with ‘General Counsel & University Secretary’.

16. ENVIRONMENTAL COMMITTEE

Senate noted the minutes of the meeting of the Environmental Committee held on 24/11/2004. There were no recommendations requiring a resolution of Senate.

17. EQUITY & EQUAL OPPORTUNITY COMMITTEE

The Chancellor recommended an amendment to the committee’s terms of reference to make the Director of Human Resources a member.
Resolved: To amend the terms of reference of the Equity & Equal Opportunity Committee in the terms attached.

18. HONORARY AWARDS & CEREMONIAL COMMITTEE

Senate noted the minutes of the meeting of the Honorary Awards & Ceremonial Committee held on 10/12/2004 and resolved in accordance with the recommendation of the committee as follows:

Resolved: (i) To approve the attached Guidelines on Regalia.

Resolved: (ii) To approve the attached Guidelines on Graduation Ceremonies.

19. LEGISLATION COMMITTEE

Senate noted the minutes of the Legislation Committee (on a decision by circulation) dated 14/02/2005. All recommendations are dealt with at item 13.

20. RESOURCES COMMITTEE (PAPERS & DISCUSSION COMMERCIAL IN CONFIDENCE)

Senate noted the minutes of the meeting of the Resources Committee held on 15/02/2005 and, after discussion in relation to the item relating to the bookshop, resolved in accordance with the recommendation of the committee as follows:

Resolved: To allocate $2.0 million of the University’s capital budget to undertake the construction of a chiropractic clinic and relocate the University bookstore and Banksia Restaurant. The PVC (Resource Management) is to provide a report to the Senate’s meeting on 29 March addressing how the Guild of Students’ issues concerning the reduction of space and its impact on seating capacity in the Refectory are being addressed. The report will be discussed with the Guild of Students prior to the 29 March meeting.

Dissent by Barbara Whelan, Daniel Narbett and Carolyn Jakobsen noted.

Resolved: (i) To approve the University’s financial statements for the year ended 31/12/2004 (attached), subject to correcting the wording of the report by members of the Senate relating to the content of the ‘Environmental Regulation’ section, and authorise the Chancellor, Vice Chancellor and Principal Accounting Officer to sign the certification of financial statements.

Resolved: (ii) To approve the attached list of payments.

Resolved: (iii) To amend the existing paragraph 8.1.1.3 of the Resources Committee’s terms of reference as follows (additions in **bold**, deletions *struck through*):

“8.1.1.3 receive and report to the Senate on the annual audited financial statements, **together with the annual report and certificate of compliance.**”

21. OFFICIAL SEAL

Senate noted the attached report provided in accordance with resolution S/54/2004.
22. INTEGRATED AGRICULTURAL RESEARCH INSTITUTE – UPDATE (COMMERCIAL IN CONFIDENCE)

Senate moved into camera for this item.

The Vice Chancellor provided an oral report on the status of discussions with this matter. He also stressed the significance of the Senate support for the proposal.

Resolved: S/14/2005
To re-affirm Senate’s statement of commitment (cf. resolution S/93/2004) to support the proposed relocation of the Agriculture Centre by making space available for the co-location of facilities (which may include expansion of the State Agricultural Biotechnology Centre, Animal Health Laboratories and other research infrastructure, and an administration building).

Signed as a true record of the meeting of the Senate held on 22/02/2005.

EMERITUS PROFESSOR GEOFFREY BOLTON - CHAIR

Dated: March, 2005
### REPORT OF ACTION ITEMS ARISING FROM THE LAST MINUTES

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Action taken since last meeting</th>
<th>Action required</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/02/2005: List of priorities for consideration at the Senate retreat</td>
<td>The Senate considered priorities at its retreat on 12 &amp; 13 March.</td>
<td>Senate needs to finalise a list of priorities for 2005.</td>
</tr>
<tr>
<td>S/05/2005: Monitoring of the top 3 strategic risk items in the Strategic Risk Management Plan</td>
<td>Added as agenda items for each quarterly meeting of SEG and the Audit Committee.</td>
<td>Senior Executive Group (SEG) &amp; Audit Committee to monitor progress.</td>
</tr>
<tr>
<td>S/06/2005: Annual report</td>
<td>Contacted Office of Auditor General and awaiting response.</td>
<td>Will notify Senate members when information is received.</td>
</tr>
<tr>
<td>S/12/2005: Impact of bookshop on seating in the Refectory</td>
<td>The PVC (Resource Management) has provided a report as required (refer to agenda item 14).</td>
<td>Nil</td>
</tr>
<tr>
<td>S/13/2005: Financial statements content regarding environmental regulation</td>
<td>The content was altered to read “The University has an environmental committee, which considers environmental issues on the University campuses. The University also has an Occupational Health and Safety Committee which considers regulatory and other obligations in relation to health and safety. The University is currently progressing on an Asbestos Management Plan and has several projects underway to decrease asbestos on campus.”</td>
<td>Nil</td>
</tr>
<tr>
<td>Resolution</td>
<td>Action taken since last meeting</td>
<td>Action required</td>
</tr>
<tr>
<td>------------------------------------------------</td>
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</tr>
<tr>
<td>S/125/2004: Elections to Senate by Convocation</td>
<td>The draft of the proposed amending legislation for the National Governance Protocols details that Convocation must elect from within Convocation’s ranks, but candidates cannot be a current member of staff or a student.</td>
<td>Nil</td>
</tr>
<tr>
<td>S/130/2005: Crown Grant</td>
<td>On 16/12/2004 the General Counsel &amp; University Secretary wrote to the Minister seeking resolution of the discrepancy between the Act and the Crown Grant. He met with representatives of the Minister on 08/02/2005 to discuss options. They will consult with the State Solicitor’s Office.</td>
<td>Maintain contact with the Minister’s office – ongoing.</td>
</tr>
<tr>
<td>S/111/2004: Negotiations for a settlement of the dispute with AEG.</td>
<td>The General Counsel &amp; University Secretary and PVC (Resource Management) have had further negotiations with AEG with a view to defining parameters for a negotiated settlement that would achieve the University’s objectives.</td>
<td>Negotiations with AEG are continuing. Trial set down for hearing on 13-24 June 2005.</td>
</tr>
<tr>
<td>S/48/2004: Appoint Malcolm Macpherson as chair of a working party to review the use of revenue from endowment funds generated by commercial activities.</td>
<td>All tax issues with the existing structure have been resolved. Informal meetings resolved that the General Counsel &amp; University Secretary would review and propose revisions to the existing policies relating to consultancies and controlled entities. The endowment funds issue will not be addressed until the first working party has completed its review, which should occur in the first quarter of 2005.</td>
<td>General Counsel &amp; University Secretary to review and advise regarding amendments necessary to controlled entities policy. Working party to conclude its review of investment policy. This was the subject of discussion at the Senate retreat on 12-13 March</td>
</tr>
<tr>
<td>S/25/2004: Revive the working party on University companies.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The President thanked Mrs Rhonda Marriott and Mrs Carolyn Jones for conducting members on a tour of the Peel campus prior to the meeting. He also thanked the City of Mandurah for allowing Council to conduct its meeting in their Council Chambers.

1. **MINUTES**
   
   Council confirmed the minutes of the meeting held on 2 February 2005.

2. **AUQA AUDIT PLANNING**
   
   Prof Jan Thomas, the PVC (Academic) provided an update on Murdoch’s preparations for the upcoming AUQA audit and the expected commitment for Academic Council. She explained how the AUQA audit will intercept with Academic Council and encouraged members to consider how they plan, act, evaluate and review in their roles as Councillors. The President thanked the PVC(A) for her informative presentation.

3. **2006 ACADEMIC PLANNING PHASE II**

   **NEW MAJORS/COURSES, INCLUDING ANY ASSOCIATED NEW UNITS AND/OR AMENDMENTS TO EXISTING UNITS AND DISCONTINUATION OF EXISTING COURSES/MAJORS/MINORS**

   The Pro Vice Chancellor (Academic), in her role as Chair Academic Policy Committee (APC) introduced APC’s report on Phase II of the 2006 academic planning round. She pointed out to members the four general principles that govern the planning process listed on the first page of her
report. She mentioned she was surprised at the lack of response from encouragement to offer
courses in collaboration with other institutions. The PVC(A) paid tribute to Mrs Tamara Martin,
Secretary to APC, for her input on the planning guidelines, her competent handling of enquiries and
the proactive approach she utilised for a difficult task. She further complimented Mrs Martin on her
tact and diplomacy.

Council agreed to consider each resolution separately and due to the content of draft resolutions 2
and 5, to consider them jointly.

New Courses

The PVC(A) advised the meeting that the new Mass Communication and Media School courses
proposed had been discussed at length by members of APC before recommending them to Council.
Assoc Prof Bev Thiele addressed the meeting in her role representing the School, rather than as a
Council member, and presented the rationale for the package of new courses from her School. She
advised that the named degrees with industry orientation came out of a long process to revitalise the
School’s offering which resulted from their School Review. The School had decided on two main
degrees embedded with majors and streamlined to allow double majors that led to strong easily
identifiable combinations. Assoc Prof Thiele and her School were congratulated by members for the
great effort that had been expended and the thoroughness of the proposal.

Resolved: (i) subject to the approval of business plans by the Senior Executive Group, to
AC/22/2005 approve the introduction in 2006 of the following courses with the structures as
attached to the agenda and located within the Division of Arts:

<table>
<thead>
<tr>
<th>Title</th>
<th>Total Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor of Mass Communication (Communication, Technology and Policy)</td>
<td>72 points</td>
</tr>
<tr>
<td>Bachelor of Mass Communication (Journalism)</td>
<td>72 points</td>
</tr>
<tr>
<td>Bachelor of Mass Communication (Public Relations)</td>
<td>72 points</td>
</tr>
<tr>
<td>Bachelor of Media (Media Studies)</td>
<td>72 points</td>
</tr>
<tr>
<td>Bachelor of Media (Radio)</td>
<td>72 points</td>
</tr>
<tr>
<td>Bachelor of Media (Screen and Sound)</td>
<td>72 points</td>
</tr>
<tr>
<td>Graduate Certificate in Philosophy</td>
<td>12 points</td>
</tr>
</tbody>
</table>

(ii) to approve an exemption from the requirement that there must be at least 36 points specified at Part II for a named degree for the following courses:

Bachelor of Mass Communication (Communication, Technology and Policy)
Bachelor of Mass Communication (Journalism)
Bachelor of Mass Communication (Public Relations)
Bachelor of Media (Media Studies)
Bachelor of Media (Radio)
Bachelor of Media (Screen and Sound);

(iii) to approve the availability of Honours within the following courses:

Bachelor of Mass Communication (Communication, Technology and Policy)
Bachelor of Mass Communication (Journalism)
Bachelor of Mass Communication (Public Relations)
Bachelor of Media (Media Studies)
Bachelor of Media (Radio)
Bachelor of Media (Screen and Sound);

(iv) to approve the triple alpha “MCC” for all new School of Media Communication
and Culture units;
to RECOMMEND to Senate to amend the following regulation as indicated below [additions in **bold**]:

- **Certificate Regulation 1 (c)**

  Insert: **Graduate Certificate in Philosophy** *(GradCertPhil)*

**New Majors and Discontinuation of Existing Courses**

The PVC(A) acknowledged that APC did not make judgement on content of majors and relied on the knowledge of the discipline, schools and divisions for this, while APC assessed the coherence, academic robustness, demand and compliance with University policy. She suggested this was the same role as Academic Council.

Again speaking on behalf of the School of Media, Communication and Culture, Assoc Prof Bev Thiele advised the meeting that the same issues had been put to her at every decision making forum at which the proposed majors had been considered. She believed that misconceptions were fuelling the debate, such as “the School was dismantling Cultural Studies and Women’s Studies.” She advised that this was not the case and reminded Council that this was against University policy. Students currently enrolled are able to complete the degree they enrolled in whilst students enrolling in 2006 would enrol in the new majors. She acknowledged that the restructure had been a difficult task that had taken over a year as many matters had to be taken into account such as affordability, resources, staff expertise and that she was proud of what her School had achieved.

Answering a question on whether there was adequate sustainable demand for the restructured majors, Assoc Prof Thiele informed Council that as these were not new programs a track record had been established and the School is aware of the size of their cohort and that the School had mapped the units against existing units. Professor Gary Martin, Pro Vice Chancellor (Strategy) advised the meeting that the Director of Murdoch International had informed him that the new majors were proving attractive by increasing the clarity of the courses offered.

A member advised his intention to abstain from voting on the grounds that students had not been thoroughly consulted. The PVC(A) refuted this advising that APC had considered this issue at two meetings where student members had been actively involved in the discussion. She suggested Council should applaud the engagement over a long period of time at whole of School level and congratulated Assoc Prof Thiele for steering the process. The motions were put and resolved with one member abstaining.

**Resolved:**

(i) **to approve the introduction in 2006 of the following majors with the structures as attached to the agenda and located within the Division indicated:**

<table>
<thead>
<tr>
<th>Title</th>
<th>Total Points</th>
<th>Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor of Arts in Gender and Cultural Studies</td>
<td>72 points</td>
<td>Arts</td>
</tr>
<tr>
<td>Bachelor of Science in Ecotourism</td>
<td>72 points</td>
<td>Science and Engineering</td>
</tr>
</tbody>
</table>

(ii) **to approve the availability of Honours within the following majors:**

- Bachelor of Arts in Gender and Cultural Studies
- Bachelor of Science in Ecotourism;
Resolved: (i) to approve the discontinuation of the following majors with effect from 2006, as located in the Division of Arts:

Bachelor of Arts in Women’s Studies
Bachelor of Arts in Communication and Cultural Studies
Bachelor of Arts in Mass Communication
Bachelor of Arts in Media Studies

(ii) to approve the discontinuation of the following courses with effect from 2006, as located in the Division of Science and Engineering:

Joint Degree Bachelor of Science Environmental Science and Bachelor of Technology Analytical Chemistry
Bachelor of Technology Analytical Chemistry
Bachelor of Technology Environmental Technology

New Minors

Resolved: to approve the introduction in 2006 of the following minors, with the structures as attached to the agenda and located within the Division of Arts:

<table>
<thead>
<tr>
<th>Title</th>
<th>Total Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance Law</td>
<td>15 points</td>
</tr>
<tr>
<td>Games Design</td>
<td>18 points</td>
</tr>
<tr>
<td>Games Technology</td>
<td>14 points</td>
</tr>
<tr>
<td>Public Relations</td>
<td>15 points</td>
</tr>
</tbody>
</table>

Foundation Unit

Members applauded the introduction of this Foundation Unit. A member suggested that the proposed unit could be tailored to be included in all offshore courses, negating the criticism that other Foundation Units were not appropriate. The PVC(A) agreed that issues such as that would be best investigated by the Foundation Unit Committee.

Resolved: to approve the introduction in 2006 of the foundation unit ‘World Indigenous Knowledges’ located within the Division of Arts.

4. VICE CHANCELLOR’S REPORT

As the Vice Chancellor was unable to attend the meeting, the President advised there were no questions on notice. He pointed out highlights in the report; the admissions success with first round offers; Murdoch had filled all places; the Vice Chancellor’s appreciation of assistance from City of Mandurah in developing the Peel campus; the new suite of courses in Local Governance; and the articulation agreement with Challenger TAFE.

A member sought clarification of the figures given on page 3 of the report under the heading International Full Fee & Exchange Students (On Shore) as to whether they represented new students or if they included a flow on from existing programs. The PVC(S) agreed to clarify the matter and provide data that tracks new growth against pipeline growth.
5. AWARD OF DEGREES, DIPLOMAS AND CERTIFICATES

Resolved: to approve the award of degrees, diplomas and certificates on the attached list.
AC/27/2005

Resolved: to rescind the award of Bachelor of Science in Veterinary Biology with Honours to
Leander Joy McLennan (30058181) and Rachel Marie Wicks (30027599).
AC/28/2005

6. PROPOSED AMENDMENTS TO FRANCHISING POLICY

Resolved: (a) to approve the revised and renamed ‘Franchising’ policy;
AC/29/2005

(b) to approve the revised and renamed Franchising Schedule, as attached to the policy;

(c) to rescind the following resolutions:
AC/138/2003
(i) to approve the revised ‘Franchised Units Schedule’ superseding that approved AC/168/2002

(ii) to approve the new ‘Franchised Courses Schedule’; and

(iii) to approve the attached revised ‘Franchised Units and Courses’ policy (incorporating the revised ‘Franchised Units Schedule’ and new ‘Franchised Courses Schedule’), superseding that approved AC/51/2003.
AC/1638/2002

(ii) the attached Franchised Units Schedule superseding the Compliance Schedule 3 that was provided in the Supplementary Agenda for the Academic Council meeting held 8 November 2002, in support of resolution AC/98/2000.

7. PROPOSED SINGLE COURSES POLICY

This item was withdrawn prior to the meeting.

8. PROPOSED SPECIALISATIONS POLICY

Resolved: (a) to approve the ‘Specialisations’ policy; and
AC/30/2005

(b) to RECOMMEND to Senate to amend to amend the following regulations as indicated below [additions in bold deletions struck through]:

Professional Doctorate Regulations
20(B) A student may undertake one Council approved specialisation within a postgraduate course. The core unit points value within the specialised set of units must be greater than 50 per cent of the total points required to complete the course.

Master by Coursework Degree Regulations
13(A) A student may undertake one Council approved specialisation within a postgraduate course. The core unit points value within the specialised set of units must be greater than 50 per cent of the total points required to complete the course.
AC/30/2005 Cont’d

Diploma Regulations

12(A) A student may undertake one Council approved specialisation within a postgraduate course. The core unit points value within the specialised set of units must be greater than 50 per cent of the total points required to complete the course.

Certificate Regulations

8(A) A student may undertake one Council approve specialisation within a postgraduate course. The core unit points value within the specialised set of units must be greater than 50 per cent of the total points required to complete the course.

9. PROPOSED AMENDMENTS TO SERVICE TEACHING POLICY

Resolved:

(a) to approve the revised ‘Service Teaching’ policy; and

(b) to rescind the ‘Service Teaching’ policy as approved by resolution AC/167/2001.

10. PROPOSED AMENDMENTS TO ACADEMIC PROGRESS FOR COURSEWORK MASTERS DEGREES RULE 8(1)

Amendments to the Academic Progress Rules for Coursework Masters Degrees to provide for the Master Of Pharmacy were approved.

Resolved:

to RECOMMEND to Senate to amend the Academic Progress Rules for Coursework Masters Degrees [additions in bold]:

Maximum period of enrolment

8(1) Students have the following maximum period in which to complete the degree:

- 24 point course - 4 years
- MBA, MEC, MIB, MSc (Telecommunications Management) - 4 years
- MNSE and MTS - 5 years
- MPharm – 6 years
- all other 48 point courses - 8 years

11. PROPOSED AMENDMENTS TO STUDENT APPEALS COMMITTEE REGULATIONS – POSSIBLE BIAS CLAUSE 10

General Counsel recommended that Academic Council amend the Student Appeals Committee Regulations to rectify deficiencies regarding the apprehension of bias.

Resolved:

to RECOMMEND to Senate to amend Student Appeals Committee Regulations as indicated below (additions in bold)

10. Members of the Committee must not participate in hearing an appeal in which there is actual bias or possible a reasonable apprehension of bias:

(a) a member who has a family or other personal relationship with the student, or is a staff member in the same discipline as a unit under appeal, must withdraw from the meeting during consideration of that case;

(b) a member who coordinated the unit, taught the student in that unit, or was enrolled in the unit that semester, must not attend any part of the meeting at which the appeal is heard.
12. ATHLETE FRIENDLY UNIVERSITY PROGRAM - PROPOSED AMENDMENTS TO BACHELOR DEGREE, DIPLOMA AND MASTERS BY COURSEWORK DEGREE REGULATIONS – ENROLMENT INTERMISSION

Murdoch University has recently been accredited as an Athlete Friendly University by the Australian Institute of Sport. It is incumbent upon Murdoch to ensure such students are not educationally disadvantaged due to the demands of their sport including travel, training, possible relocation and competition. Council considered amendments to enrolment intermission provisions within regulations.

Resolved: AC/34/2005 to RECOMMEND to Senate to amend the following regulations as indicated below [additions in bold].

Bachelor Degree Regulations

Insert new 38 (B): Enrolment Intermission

Enrolment intermission must be applied for when students require a break in studies of one year or more. Students may apply for intermission due to serious illness or other exceptional personal circumstances which might prohibit them from continuing their enrolment. This may include but is not limited to, personal / family reasons, employment, sporting, cultural, legal or military duties.

Enrolment intermission requires the approval of the Fees and Enrolments Officer in the Office of Central Student Administration.

Diploma Regulations

Insert new 15(B) Enrolment Intermission

Enrolment intermission must be applied for when students require a break in studies of one year or more. Students may apply for intermission due to serious illness or other exceptional personal circumstances which might prohibit them from continuing their enrolment. This may include but is not limited to personal / family reasons, employment, sporting, cultural, legal or military duties.

Enrolment intermission requires the approval of the Fees and Enrolments Officer in the Office of Central Student Administration.

Masters by Coursework Degree Regulations

Insert new 16(B) :Enrolment Intermission

Enrolment intermission must be applied for when students require a break in studies of one year or more. Students may apply for intermission due to serious illness or other exceptional personal circumstances which might prohibit them from continuing their enrolment. This may include but is not limited to personal / family reasons, employment, sporting, cultural, legal or military duties.

Enrolment intermission requires the approval of the Fees and Enrolments Officer in the Office of Central Student Administration.
13. COURSES FLAGGED FOR CONSIDERATION OF REVITALISATION OR DISCONTINUANCE

The President congratulated the Schools on their engagement with this issue. He stressed the importance of the revitalisation process taking place rapidly and that progress be reported by Executive Deans in their annual reports to Council.

One member suggested that a complete list of courses with their rankings should be available to Council in the interests of transparency and as the author of the *Evaluation of Undergraduate Courses* policy. The PVC(A) responded that the academic community was sensitive to that type of information being publicly available and that transparency was appropriately gained by being received by the Senior Executive Group as well as Executive Deans. A member made the suggestion that others could learn from the best practice adopted by the top 2 courses if the information was available.

A member proposed that it was important that Council was clear as to the expected outcome from the exercise, as there would always be a bottom 10% of courses and questioned whether Council was seeking improvement to the indices. The PVC(A) answered that the intent was to raise the standard of a student’s experience at Murdoch. The President commented that if a large course ranked within the bottom 10% of courses that would be of more concern than a smaller course.

The President said it was important that Schools identify where problems exist and find solutions. The Executive Dean of the Division of Health Sciences informed the meeting that he found the exercise valuable, as it prompted questions as to why the rating was low, and induced action to lift the rating. He advised that it aids understanding as to why a course has a low rating and prompts remedial action. He suggested that the indices utilised were not critical as they provided a broad spectrum of information that prompted action. The PVC(A) said whilst there had been a lot of discussion about the inadequacies of the indices it was important to understand that these were the same measuring tools used by the Federal Government. Responding to a statement that there are problems with the survey data the President advised that one issue was the data and another, and more important one, was that more time should be spent on improving the course than complaining about the indices.

A member suggested that course revitalisation strategies could include elements offered in the School Development Process. Some of these may include

- Mapping of Graduate Attributes
- Strategies for the development of aligned curriculum
- Focus groups with employers to stimulate opportunities for graduates
- Flicking units
- Staff workshops

The PVC(A) endorsed the suggestion that the School Development Process strategies be utilised, however, she reinforced the point that costs associated with revitalisation would have to be met by the Division. It would be inappropriate to presume that the Teaching and Learning Centre (TLC) would absorb additional costs. Divisions should be aware that the resources required for revitalisation should be sourced from within their Division.
A member expressed concern that in the Bachelor of Arts – Psychology revitalisation plan there was no reference to the training of tutors, lecturers and staff. The meeting was advised that there are an extensive suite of TLC staff development programs that can be accessed. It was suggested that feedback should be given to Executive Deans and those preparing revitalisation plans that attention to staff training be included in their reports.

The Executive Dean of the Division of Arts confirmed that the Divisional Board had approved the revitalisation plans for the Bachelor of Multimedia and the Bachelor of Mass Communication at its meeting that morning.

The draft motion was amended by the President from that recommended in the agenda by the addition of (b) and (c) to formalise Council’s requirements.

Resolved:

\[ AC/35/2005 \]

(a) to note the reports from the Executive Dean of the Division of Arts [Bachelor of Multimedia and Bachelor of Mass Communication], the Executive Dean of the Division of Health Sciences [Bachelor of Arts – Psychology] and the Executive Dean of Science & Engineering [Bachelor of Science – Chemistry] in accordance with the Evaluation of Undergraduate Courses Policy;

(b) that the Executive Deans report to Council as part of their annual report on the specific actions being undertaken to revitalise the Courses flagged for revitalisation including the latest data for the indices used to calculate the Course Quality Index highlighting any trends;

(c) that Student Surveys of Units be undertaken each time a unit is run for all units in a course identified for revitalisation.

14. PROPOSED CENTRE FOR HUMAN RESOURCE INNOVATION

Resolved:

\[ AC/36/2005 \]
to recommend to the Vice Chancellor that the Centre for Human Resource Innovation be established and classified as a Professional Centre.

15. OFFSHORE COURSES REVIEW

The President alerted members to the unusual occurrence of affirmations within the report whereby the Panel affirmed suggestions made by Murdoch, normally Panels made recommendations only. These affirmations were very useful. He also advised that many of the recommendations and affirmations had already been acted upon and were part of the Manual for the Development and Implementation of Offshore Courses. He expressly recognised the considerable effort by Mrs Jane Michell in compiling the manual and acknowledged that her excellent work had produced this extremely helpful manual. He pointed out to members that the table of responsibilities on the last page of the report was a reflection of the current status.

Resolved:

\[ AC/37/2005 \]
to adopt the recommendations of the Offshore Review Panel as modified by the President in Column 3.

16. MEMBERSHIP STUDENT APPEALS COMMITTEE

The President advised the meeting that whilst he had finalised the panel members for the Student Appeals Committee, he was awaiting a decision from a staff member as to acceptance of the position Chair of the Committee. Council agreed to consider the matter by circulation prior to the next meeting.
17. INTRODUCTION OF MASTER OF HUMAN RESOURCE MANAGEMENT (MHRM) AT SINGAPORE MANUFACTURERS ASSOCIATION (SMA)

Resolved: to ratify the actions of the President to approve the introduction of the MRHM at SmA.
AC/38/2005

18. BACHELOR DEGREE REGULATIONS (BDR) 65 (1) AND (2) – TWO TESTAMURS FOR HONOURS DEGREE

At its 2 February 2005 meeting Council recommended to Senate changes to BDR 65 (1) and (2). Further changes to the side note were required by the Legislation Committee.

Resolved: to ratify the actions of the President to approve the following recommended wording of the side note to BDR 65(1) and (2) (additions in bold, deletions struck through):

Ordinary degree not conferred if proceeding to honours, with the exception of or to the BBiot, BEnvSc, or BPsych.

AC/39/2005

19. MEMBERSHIP - COMMITTEE ON UNIVERSITY ENTRANCE (CUE)

Resolved: to ratify the actions of the President to approve the appointment of Mr Danny Toohey to the Committee on University Entrance with his term of office expiring at the commencement of second semester in 2005 (replacing Dr Anne Surma).
AC/40/2005

20. SENATE

At its meeting on 22 February 2005, Senate approved the following recommendation generated from Academic Council meeting of 2 February 2005:

Amendment of Regulations:
Bachelor Degree Regulation 65 (1) and (2) and side note.

The meeting ended at 3.25 pm

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<tr>
<th>FUTURE MEETING DATES</th>
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<td>Wednesday 14 September, 2005</td>
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<td>Wednesday 2 November, 2005</td>
<td>Friday 21 October 2005</td>
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1. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)
   
   Nil.
   
   The Chair welcomed Mr Terry Budge as an official invitee to meetings of the committee as an interim measure until he replaces Dr McCall on expiry of the latter’s term as a member of Senate.

2. CONFIRMATION OF MINUTES
   
   The minutes of the meeting held on 08/02/2005 were confirmed.

3. DECISION BY CIRCULATION
   
   The committee, by circulation, ratified the Vice Chancellor’s decision to appoint John Pease to the merged, General Counsel & University Secretary position as per the minute attached. The effective date of the resolution is 09/03/2005, when an absolute majority of the members voted in support.

4. RE-DRAFTING OF THE SENATE CHARTER AND TERMS OF REFERENCE FOR CHANCELLOR’S COMMITTEE
   
   The committee considered draft amendments to clause 14 of the Senate Charter and the terms of reference for the Chancellor’s Committee dealing with responsibility for decisions relating to the General Counsel & University Secretary position.
   
   Resolved: To recommend to Senate as follows:
   
   CC/03/2005
   
   (i) To amend clause 14 of the Senate Charter and the terms of reference for the Chancellor’s Committee in the terms attached (amendments marked up).
   
   (ii) To rescind Senate resolution S/09/2005(ii) as its terms are inconsistent with and replaced by clause 14.2 of the Senate Charter as amended.

5. NEW STANDING ORDER 4.7A
   
   The committee considered a proposal by the Chancellor that Senate adopt a more efficient means of dealing with requests to remove items from the ‘en bloc’ part of the Senate agenda.
Resolved: To recommend to Senate that the standing orders be amended by inserting a new standing order 4.7A in the terms attached

6. GOVERNANCE MATTERS

The committee considered the role of the existing Governance Working Party and how best to address governance matters generally. Differing viewpoints and options were canvassed, including:

➢ Governance is very much a matter of focus externally and the University should give it prominence by way of a separate committee. It is also a way of giving less senior members of Senate an opportunity of participating and gaining experience in governance related matters.

➢ The Senate should not be creating a committee unless a compelling need for it can be shown. Further, governance is a core responsibility of Senate and it is impossible to specify terms of reference defining what matters of governance are to be addressed by the committee. In any event, care is needed to ensure that there is no overlap between governance matters addressed by the Chancellor’s Committee and any other committee.

➢ The Office of Legal & Governance is well placed to either act on requests from Senate or to alert Senate to any upcoming governance issues or opportunities for Senate to develop and/or enhance its processes and procedures and, as necessary, the Senate can then form a working party charged with the task of addressing the particular issue or opportunity.

The committee will give further consideration to this matter at its next meeting. In the interim, the General Counsel & University Secretary will endeavour to ascertain what other universities are doing in this regard. He will also attempt to draft terms of reference for a standing committee.

7. NOMINATIONS COMMITTEE

The committee considered the Chancellor’s recommendation that the Nominations Committee include the Director of Human Resources as a standing invitee, so that as and when due diligence enquiries are required of potential new members for Senate, the committee has available the network and facilities of the Director to make them.

The Chancellor also reported that he had appointed Terry Budge as a member of the Nominations Committee.

Resolved: To recommend to Senate that the terms of reference for the Nominations Committee be amended by adding the Director of Human Resources as a standing observer/invitee to the committee’s membership.

4. NEXT MEETING

The next meeting of the committee will be held on Tuesday, 29/03/2005 at 4:00 pm. The venue will be the Vice Chancellor’s dining room, South Street Campus.

Signed as a true record of the meeting of the Chancellor’s Committee held on 12/03/2005.

Geoffrey Bolton - Chair

Dated: March, 2005
CHANCELLOR’S COMMITTEE

MINUTES OF DECISION (BY CIRCULATION)

Effective date: Wednesday, 09/03/2005
Result: In accordance with Senate Standing Order 3.9.5, an absolute majority of members of the committee voted in favour of the resolution below.
Members voting: Em. Prof Geoffrey Bolton Mr Bob Pett
Judge Kate O’Brien Dr Michael McCall
Mr Malcolm Macpherson Sir William Heseltine
Secretary: John Pike
Apologies: Not applicable
Official attendees: Not applicable
Observers: Not applicable

1. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)
   Alison Gaines declared a conflict of interest given her position at the Law Society, of which Mr Pease is a member, and did not vote.

2. CONFIRMATION OF MINUTES
   Not applicable.

3. RATIFICATION OF APPOINTMENT OF GENERAL COUNSEL & UNIVERSITY SECRETARY
   The committee noted the Chancellor’s advice that the Vice Chancellor had appointed John Pease to the General Counsel & University Secretary position based on a due diligence review by the Director of Human Resources in relation to Mr Pease’s qualifications and experience against the new position description.
   Resolved: To ratify the decision of the Vice Chancellor to appoint John Pease to the General Counsel & University Secretary position.

4. NEXT MEETING
   Not applicable.
Changes to clause 14 of the Senate Charter

14. Role and independence of the General Counsel & University Secretary

14.1. Role of the General Counsel & University Secretary:

14.1.1. The General Counsel is the University’s senior legal adviser. Amongst other things, he/she is responsible for providing the University, the Senate and individual Senators with legal representation and accurate, timely and focussed legal advice.

14.1.1.1. Where necessary, the General Counsel will issue instructions to external lawyers.

14.1.2. Apart from legal advice relating to the University and its operations generally, the Chancellor and Senators should ordinarily look to the General Counsel for guidance and advice regarding their legal and statutory responsibilities and legal issues arising from governance matters.

14.1.3. The General Counsel & University Secretary also plays a key role in supporting the effective operation and conduct of the Senate as the governing body, and in ensuring that appropriate procedures are followed. He or she discharges this role by:

14.1.3.1. Providing secretariat support to the Senate and to those of its committees and working parties determined by the Chancellor. This includes organising meetings, preparing agendas and minutes (subject to approval by the Chancellor), writing background papers as required, and ensuring Senate papers provide clear and sufficient information to enable it to be well informed and reach decisions on the matters before it.

14.1.3.2. Providing the Senate and its Senators with independent, impartial advice on all matters of procedure and on governance.

14.1.3.3. Supporting a harmonious relationship between the Senate and management, including by coordinating the transmission of business between the Senate and its committees and senior management and facilitating good information flows in both directions. In all respects the General Counsel & University Secretary must ensure that all information and advice that he or she provides is impartial and accurate.

14.1.3.3.1. It is important that the General Counsel & University Secretary both consults and keeps the Vice Chancellor fully informed on the Senate’s business (other than in relation to the consideration of the Vice Chancellor’s emoluments or otherwise where understood with the Chancellor that a matter is confidential).

14.1.3.3.2. It is good practice for the Chancellor, the Vice Chancellor and the General Counsel & University Secretary to work closely together.

14.1.3.4. Monitoring that Senate policy and procedures are followed and advising the Chancellor where they are not.

14.1.4. The General Counsel & University Secretary is accountable to the Senate, through the Chancellor, in the performance of his or her Senate related duties and on all governance matters. He or she is accountable to the Vice Chancellor in the performance of his or her legal, executive and other management related duties

14.1.5. If the General Counsel & University Secretary considers, on reasonable grounds, that there may be significant breaches of accountability, of compliance with statutory requirements or of
corporate ethics and/or there are issues of governance that the University is not adequately
dealing with, he/she has a duty to report the matters to the Chancellor and the Vice Chancellor.

14.1.6. Where the role of the General Counsel & University Secretary is combined with any
administrative or managerial role within the University, great care must be exercised not to
compromise the independence of the secretariat role. The latter must always take priority.

14.1.6.1. If the General Counsel & University Secretary considers, on reasonable grounds, that
there is an actual or potential conflict between his/her secretariat and non-secretariat
responsibilities, he/she will draw it to the attention of the Chancellor.

14.1.6.2. If the Chancellor believes that such a conflict of interest exists, the Chancellor will
ordinarily seek advice from the Vice Chancellor, but will offer the General Counsel &
University Secretary an opportunity to respond. The Chancellor may refer the issue to
the Senate for consideration.

14.2. Independence of the role:

14.2.1. It is critical that the occupant of the General Counsel & University Secretary position is able to
discharge his or her responsibilities independently, without fear or favour.

14.2.1.1. The Vice Chancellor (in consultation with the Chancellor) has primary responsibility
for decisions relating to:

14.2.1.1.1. the appointment of persons to the position; and

14.2.1.1.2. the termination of employment of persons in the position.

14.2.1.2. However, in recognition of the need to maintain the independence of the role, any
decision of the Vice Chancellor in this regard must be referred to the Chancellor’s
Committee for ratification or otherwise as deemed appropriate.

14.2.1.3. The Chancellor’s Committee has primary responsibility for decisions relating to the
existence or continuation of the position itself (as opposed to hiring or firing
individuals). Decisions of the Chancellor’s Committee in this regard must be referred
to the Senate for ratification or otherwise as deemed appropriate.

Changes to terms of reference for Chancellor’s Committee

2. Chancellor’s Committee

2.1. Terms of reference:

2.1.1. To determine the remuneration and conditions of service of the Vice Chancellor.

2.1.2. To recommend to the Senate on what should be the performance objectives of the Vice
Chancellor.

2.1.3. To review the Vice Chancellor’s performance each year against these objectives.

2.1.4. To advise the Chancellor on governance issues and matters of substance affecting or of
concern to the University generally, where the Chancellor seeks such advice.

2.1.5. Subject to being satisfied that it is appropriate to do so, to ratify decisions of the Vice
Chancellor relating to the appointment of persons to the General Counsel & University
Secretary position and the termination of employment of persons in that position.
2.1.6. To make decisions regarding the existence or continuation of the General Counsel & University Secretary position itself (as opposed to hiring or firing individuals), such decisions requiring ratification by the Senate.

2.2. Composition:

2.2.1. Chancellor (chair)

2.2.2. Pro Chancellor

2.2.3. Chair of Resources Committee

2.2.4. At least 2 other members appointed by the Chancellor from amongst the Senators, who are not staff or students of the University.

2.2.5. The membership will include at least one male and at least one female.

2.2.6. Secretary: General Counsel & University Secretary

2.3. Membership criteria

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<tr>
<td>• Respect for confidentiality of the discussions</td>
<td>• Some members with experience as senior executives</td>
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<tr>
<td>• Not staff or students of the University</td>
<td>or as an employer of senior executives</td>
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Proposed new standing order 4.7A

4.7A. Where a member of Senate requires that an item included in the ‘en bloc’ part of the agenda for any meeting of Senate be removed for discussion and debate at the meeting, the member will notify the General Counsel & University Secretary of the requirement no later than 12 noon on the business day immediately preceding the date of the relevant meeting.

4.7A.1. A notice under standing order 4.7A will include brief particulars of the Senate member’s concerns or questions about the particular agenda item.

4.7A.2. On receipt of a notice under standing order 4.7A, the General Counsel & University Secretary will immediately advise: (i) the Chancellor; and (ii) the Vice Chancellor and/or the appropriate member of the Senior Executive Group, with a view to ensuring that, as necessary, additional information is provided to the Senate member in advance of the meeting with the objective of resolving the requirement for debate and/or discussion during the Senate's meeting.

4.7A.3 Where a notice under standing order 4.7A has not been given, the Chair of the relevant meeting retains a discretion whether or not to permit a member of Senate to request that an item included in the ‘en bloc’ part of the agenda be removed for discussion and debate at that meeting.
Effective date: 18 March 2005

Result: In accordance with Senate Standing Order 3.9.5, an absolute majority of members of the committee voted in favour of the resolution below.

Members voting: Mr R Pett/Mr B Blackall/Prof J Yovich/Prof S Bradley/Ms B Whelan/Mr G Hunt

Abstentions: Mrs P Allen

Secretary: Robin Lees

Apologies: Not applicable

Official attendees: Not applicable

Observers: Not applicable

1. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)

No interests were declared

2. CONFIRMATION OF MINUTES

Not applicable.

3. PARAGEN PTY LTD

Resolved: Senate resolves as follows:

RC/06/2005

(i) Subject to paragraph (iii), to authorise Murdoch Ventures Pty Ltd to subscribe for and hold 50% of the issued capital in an incorporated entity that will own a majority shareholding in Paragen Pty Ltd;

(ii) Subject to paragraph (iii), to authorise the University to transfer its current shareholding in Paragen Pty Ltd to the new incorporated entity referred to in paragraph (i); and

(iii) These authorisations are subject to:

(a) the University obtaining tax advice confirming that the transactions and proposed structure do not create any adverse consequence for the University or its companies; and

(b) the proposed incorporated entity adopting a statement of governance principles to include a reporting regime to its shareholders that conforms to the University’s Governance of University Entities Policy.

4. MURDOCH WESTSCHEME ENTERPRISE PARTNERSHIP

Resolved: Senate resolves as follows:

RC/07/2005

(i) Subject to (ii), paragraphs 1 and 2, the University’s Policy for the Establishment and Operation of Incorporated Entities will not apply to companies proposed to be incorporated pursuant to a resolution of the Investment Committee of the Murdoch Westscheme Enterprise Partnership (“MWEP”).
(ii) This exemption is subject to:

(a) The University obtaining tax advice confirming that the formation of companies owned by the MWEP partners, namely Murdoch Ventures Pty Ltd (“MVPL”) and WestScheme Ventures Pty Ltd (“WVPL”), does not create any adverse consequence for the University or its companies.

(b) With the exception of paragraphs 1-3, 5, 14-18, 21, 24, and 28, the University’s Policy for the Establishment and Operation of Incorporated Entities will apply to every MWEP Partnership Company, modified as necessary.

(c) MVPL and WVPL will subscribe for and hold equal percentages of the issued capital in any MWEP Partnership Company, subject to the discretion of the MWEP Investment Committee to resolve that the shareholding in any MWEP Partnership Company should be apportioned on any other basis, including the possibility that a third party may be invited to subscribe for shares.

(d) The board of directors of each MWEP Partnership Company will comprise MVPL appointees at least equal to the ratio of MVPL to non-MVPL equity in the entity. Irrespective of the shareholding, the University must be entitled to nominate at least one member of the board of directors of any MWEP Partnership Company. Such nomination will be at the discretion of the Vice Chancellor taking into account paragraph 17(c) of the University’s Policy for the Establishment and Operation of Incorporated Entities.

(e) The Director of R&D will report to the Senate immediately after the incorporation of each such MWEP Partnership Company, providing details of the entity name, directors, shareholding and proposed commercialisation plan for the company.

(f) At the first meeting, the board of directors (or equivalent) of every MWEP Partnership Company will adopt and evaluate regularly a written statement of its governance principles that contains, as a minimum, standards of governance contained in the University’s Policy for the Governance of University Entities.

(g) Each MWEP Partnership Company will prepare an annual business plan, operate on approved budgets, and report to its shareholders on its activities at least quarterly. The business plan, budgets and reports on activities will be presented its shareholders (or equivalent) for approval.

(h) A MWEP Partnership Company must obtain shareholder approval before: (1) the incurring of any debt; (2) the provision of any guarantee; or (3) the incurring of any contingent liability. Shareholder approval will be given only after careful consideration of a business case (in writing) including a risk assessment of the proposed activity.

(i) The audited financial statements of each MWEP Partnership Company must be presented to its shareholders (or equivalent) for review within 3 months of the financial year-end of the entity.

(j) Each MWEP Partnership Company is responsible for its own administrative, secretariat and accounting support. The University may provide such support on a fee for service basis.

(iii) The Senate approves the expansion of the partnership to include commercialisation of 3rd party owned intellectual property in respect of which the University has no interest, and authorises the General Counsel & University Secretary to arrange for appropriate amendments to be made to the MWEP partnership to effect this approval.

5. FOR NOTING

Bookshop Development and Location of the Guild Tavern

Members noted the paper addressing the action item from the Senate Minutes (S/12) of 22 February 2005, relating to the decrease in size of the redeveloped refectory area.
Date: 8 / 03 / 2005
Referred to Senate: through the Resources C'tee.

Subject: Paragen Pty Ltd
From: Dr Paul D'Sylva
Division: Research & Development

Purpose:
To update Senate through the Resources Committee in relation to the status of Paragen Pty Ltd

Background & summary:
The University owns 62.5% of the issued shares of Paragen Pty Ltd ("Paragen"), which was formed to develop and exploit a non-chemical flea vaccine.

The relationship with the other shareholder, Imugene/Brightsun, has been troubled with virtually no progress being made over the last 12 months due to lack of funding support.

The stalemate with Imugene/Brightsun has been broken by transferring the project to the Murdoch Westscheme Enterprise Partnership ("MWEP"), which has made a funding proposal to Paragen.

The position regarding Paragen has progressed since the last update. MWEP's external lawyers, Blake Dawson Waldron, have provided the latest revised version of the draft subscription and shareholders agreement ("SSA") and a revised draft constitution ("New Constitution") for Paragen to adopt.

Issues & alternatives considered:
MWEP has circulated the latest draft version of the SSA and the New Constitution amongst the various stakeholders. If accepted without further amendment, it is anticipated that the matter will proceed to a successful conclusion in the near future.

MWEP's funding proposal for investing in Paragen includes a requirement of establishing a subsidiary incorporated entity ("Subsidiary") as a vehicle for this transaction. Murdoch Ventures Pty Ltd and Westscheme Ventures Pty Ltd, wholly owned subsidiaries of Murdoch University and Westscheme, respectively, and the partners of MWEP, will be equal shareholders in the Subsidiary. As part of the MWEP proposal, shares in Paragen will be held as follows:

- the Subsidiary will hold 700 Series A preferential shares;
- Murdoch University will transfer its 1000 ordinary shares to the Subsidiary; and
- Imugene/Brightsun will hold 600 ordinary shares.

The rationale for the incorporation of MWEP Subsidiary as the vehicle for this transaction is to provide an extra layer of protection for MWEP and to serve as a risk mitigation measure to reduce risk to MWEP directly and ultimately the partners of MWEP. This is especially relevant given the previous history and conduct of Brightsun Pty Ltd the continuing minority shareholder in Paragen.

If the MWEP proposal is successful, the Subsidiary will have to be established before the signing of the SSA. As such, Senate approval is sought for Murdoch Ventures Pty Ltd to take a 50% shareholding in the Subsidiary with the remaining 50% to be held by Westscheme Ventures Pty Ltd.

In establishing the Subsidiary, Murdoch Ventures Pty Ltd will ensure that the Subsidiary will adopt a written statement of governance principles conforming to Murdoch University’s own standard governance principles as contained in the University’s Governance of University Entities Policy. The principles will include:

- the periodical evaluation of its statement of governance principles;
- responsibility for developing strategies and policy including the development and adoption of a clear corporate and business strategic plan;
- responsibility for budgeting, planning and performance management including the preparation of an annual budget, ensuring that key performance indicators set by the board are met;
- responsibility for internal controls and management information systems;
- responsibility for risk management on a continuing basis;
- implementation of reporting protocols for the preparation of reports to its shareholders to allow them to meet their reporting obligations to their respective governing bodies, for example, for Murdoch Ventures Pty
Ltd to report to the Resources Committee on the performance of the Subsidiary, and to ensure effective communication between the board of the Subsidiary and its shareholders on significant matters.

Tax advice on this transaction is also being sought from both the Office of Financial Services and Blake Dawson Waldron. Such advice will cover the establishment of the Subsidiary as the appropriate vehicle for this transaction.

**Linkage to the University’s strategic plan:**
The exploitation of Murdoch University’s existing and potential intellectual property, technology transfer, and commercialisation.

**Risk management considerations:**
As mentioned earlier, the establishment of the Subsidiary as the appropriate vehicle for this transaction will add an additional payer of protection between MWEP and the investment in Paragen. The Subsidiary will also have a risk mitigation function in further protecting the partners of MWEP from any potential liability.

Additionally, the SSA will govern the conduct of the project, which is the core activity of Paragen. The additional oversight by the Subsidiary and the strict adherence to an already established project work plan contained within the SSA will ensure that the project will flow smoothly.

The SSA also gives the Subsidiary control of Paragen through its shareholding to ensure that the core activity and governance of Paragen is managed in accordance with the SSA and the project work plan.

**Who has been consulted:**
- Leigh Warnick, Blake Dawson Waldron
- Julie Keene, Director, Office of Financial Services
- Manraj Khosa, Legal Counsel, Office of Legal & Governance

**Attachments:**
- No attachments

**Further information is available at:**
Not Applicable

**Who to contact & his/her contact details to discuss the matter before the meeting:**
Paul D’Sylva,
Director, Division of Research & Development
Direct Line: 9360 2574
Email: P.D’sylva@Murdoch.edu.au

**Recommendation:**

Senate resolves as follows:

(i) Subject to paragraph (iii), to authorise Murdoch Ventures Pty Ltd to subscribe for and hold 50% of the issued capital in an incorporated entity that will own a majority shareholding in Paragen Pty Ltd;

(ii) Subject to paragraph (iii), to authorise the University to transfer its current shareholding in Paragen Pty Ltd to the new incorporated entity referred to in paragraph (i); and

(iii) These authorisations are subject to:

   (a) the University obtaining tax advice confirming that the transactions and proposed structure do not create any adverse consequence for the University or its companies; and

   (b) the proposed incorporated entity adopting a statement of governance principles to include a reporting regime to its shareholders that conforms to the University’s Governance of University Entities Policy.
Signed:

DR PAUL D’SYLVA
DIRECTOR, DIVISION OF RESEARCH & DEVELOPMENT

Supported:

MR IAN CALLAHAN
PRO VICE CHANCELLOR (RESOURCE MANAGEMENT)
SENATE BRIEFING PAPER

Date: 7 / 03 / 2005  Referred to Senate: through the Resources C'tee.

Subject: Murdoch Westscheme Enterprise Partnership (“MWEP”)

From: Dr Paul D’Sylva  Division: Research and Development

Purpose:
Confirm the ability of the MWEP to manage the affairs of the partnership without regular recourse to the Universities’ governing bodies and to approve the expansion of the partnership to include 3rd party IP.

Background & summary:
In November 2004 Senate approved the formation of MWEP. MWEP is a 50/50 partnership with the Westscheme Superannuation fund and Murdoch through their respective wholly owned subsidiaries Westscheme Ventures Pty Ltd and Murdoch Ventures Pty Ltd. In essence Murdoch provides intellectual property (“IP”) and Westscheme research funding of the IP.

The joint venture is essentially an incubation fund to harness and develop IP commercialisation opportunities using Murdoch introduced IP. The partnership is administered by the University’s Industry Liaison Office and funded by Westscheme. The initial twelve month period of operation has achieved a high profile within Murdoch’s research community with currently 6 projects approved for funding. Many other proposals have been filtered out following a robust assessment process which is central to the success of MWEP.

The Resource Committee has been updated on the progress of MWEP, including its governance regime and its Chair has also been provided with specific informal briefings on a regular basis.

MWEP is gathering momentum. It is evident the next phase will soon require the incorporation of specific purpose companies and swift decision making processes. However University policies, if strictly applied, may inadvertently serve to unduly hinder MWEP’s objectives.

At its inception Senate implicitly vested MWEP’s management with delegated authority to make decisions and do all things necessary to ensure MWEP was a commercial success.

The University has policies in place related to the incorporation and management of entities which, inter alia, require Senate approval for incorporation and adherence to good governance practices.

For the avoidance of doubt Senate is being requested to note and acknowledge the ability of MWEP to establish companies and to manage the affairs of the partnership as MWEP deems appropriate. In this regard it should be noted that entities will be directly owned by MWEP. As such the University will not have majority control.

It is also planned to expand the partnership to include access to 3rd party owned IP to increase the catchment area. The original submission to Senate only referred to Murdoch IP and, for absolute clarity, management feels it necessary to alert Senate of this prospect and seek specific approval for this variation to allow the partnership agreement to be amended.

Issues & alternatives considered:

Conventional approval processes through Resources Committee and then Senate will often elongate response times required in the commercial sector, especially given the duration between meetings. However the reporting regime into Resource Committee will continue.

Senate has previously mandated the incorporation of entities for commercial activities with part of the rationale being to ring fence and distance itself from liabilities or other exposures. The MWEP model complies with these requirements including the provision of an independent, accountable and experienced board for all MWEP subsidiaries.

It is expected that each new subsidiary will adopt its own governance principles in much the same way as public listed companies are required to document their practices. Similarly as Murdoch’s own governance principles reflect broader community values, the expectation is MWEP subsidiary companies will behave and conduct its affairs along similar lines to the University. However, the independence and responsibility of each board to conduct its affairs as it sees fit is an overriding fact.

Linkage to the University’s strategic plan:
The commercialisation of the University’s intellectual property.
Risk management considerations:
MWEP has an imbedded governance structure enshrined in the partnership agreement. This includes a Steering Committee, which comprises 2 Murdoch appointees, namely, the Vice Chancellor and the Pro Vice Chancellor - Research & Development. The Committee is charged with dealing with matters of policy, governance and determination or resolution of all partnership issues (Refer Attachment A). This includes the formation of companies and the appointment of suitable directors.

Any MWEP owned companies would be manned by a board with appropriate skills and expertise.

MWEP has a Commercial Manager whose responsibilities are outlined in Attachment 2. The position adds a further layer of protection through the oversight of commercial issues and risks from the global perspective of the partnership as a whole. The partnership has a dedicated Investment Manager whose day to day responsibilities are also attached.

There is already a formal and informal dialogue with the Resources Committee and it is envisaged that this is further mingled into the Committee’s reporting calendar. It is stressed however that the nature of such reporting is for information and relates to the University’s monitoring of its investment in the partnership, rather than as a mechanism to act as an approving authority.

It is also intended to undertake an annual gap analysis of MWEP and National Governance protocols for Public Higher Education institutions and advise Resource Committee of the results.

The Office of Legal and Governance continually observes the activities of the partnership in respect of Murdoch’s equity interest.

Who has been consulted:
General Counsel/ Director - Research & Development/ Pro-Vice Chancellor (Resource Management)/Director - Office of Financial Services/MWEP Investment Manager & MWEP Commercial Manager

Attaches:
- The following documents are attached:
  - Steering Committee terms of reference
  - Investment Manager & Commercial Manager’s responsibilities

Further information is available at:
www.intellectualprofits.com.au (Web site for MWEP)

Who to contact & his/her contact details to discuss the matter before the meeting:
Dr Paul D’Sylva - Director - Research & Development  Direct Line: 9360 2574 E-Mail: p.d’sylva@murdoch.edu.au

Recommendation:
Refer attached sheet “ALTERNATIVE WORDING FOR SENATE’S GENERIC APPROVAL FOR MWEP PARTNERSHIP COMPANIES”

Signed:
(Original signed)
DR PAUL D’SYLVA
DIRECTOR - RESEARCH & DEVELOPMENT

Supported:
(original signed)
PROF. ANDRIS STELBOVICS
PRO VICE CHANCELLOR - RESEARCH & DEVELOPMENT
ALTERNATIVE WORDING FOR SENATE’S GENERIC APPROVAL
FOR MWEP PARTNERSHIP COMPANIES

Recommendation:

Senate resolves as follows:

(i) Subject to (ii), paragraphs 1 and 2 of the University’s Policy for the Establishment and Operation of Incorporated Entities will not apply to companies proposed to be incorporated pursuant to a resolution of the Investment Committee of the Murdoch WestScheme Enterprise Partnership (“MWEP”).

(ii) This exemption is subject to:

(a) The University obtaining tax advice confirming that the formation of companies owned by the MWEP partners, namely Murdoch Ventures Pty Ltd (“MVPL”) and WestScheme Ventures Pty Ltd (“WVPL”), does not create any adverse consequence for the University or its companies.

(b) With the exception of paragraphs 1-3, 5, 14-18, 21, 24, and 28, the University’s Policy for the Establishment and Operation of Incorporated Entities will apply to every MWEP Partnership Company, modified as necessary.

(b) MVPL and WVPL will subscribe for and hold equal percentages of the issued capital in any MWEP Partnership Company, subject to the discretion of the MWEP Investment Committee to resolve that the shareholding in any MWEP Partnership Company should be apportioned on any other basis, including the possibility that a third party may be invited to subscribe for shares.

(c) The board of directors of each MWEP Partnership Company will comprise MVPL appointees at least equal to the ratio of MVPL to non-MVPL equity in the entity. Irrespective of the shareholding, the University must be entitled to nominate at least one member of the board of directors of any MWEP Partnership Company. Such nomination will be at the discretion of the Vice Chancellor taking into account paragraph 17(c) of the University’s Policy for the Establishment and Operation of Incorporated Entities.

(d) The Director of R&D will report to the Senate immediately after the incorporation of each such MWEP Partnership Company, providing details of the entity name, directors, shareholding and proposed commercialisation plan for the company.

(c) At the first meeting, the board of directors (or equivalent) of every MWEP Partnership Company will adopt and evaluate regularly a written statement of its governance principles that contains, as a minimum, standards of governance contained in the University’s Policy for the Governance of University Entities.

(f) Each MWEP Partnership Company will prepare an annual business plan, operate on approved budgets, and report to its shareholders on its activities at least quarterly. The business plan, budgets and reports on activities will be presented to its shareholders (or equivalent) for approval.

(g) A MWEP Partnership Company must obtain shareholder approval before: (1) the incurring of any debt; (2) the provision of any guarantee; or (3) the incurring of any contingent liability. Shareholder approval will be given only after careful consideration of a business case (in writing) including a risk assessment of the proposed activity.

(h) The audited financial statements of each MWEP Partnership Company must be presented to its shareholders (or equivalent) for review within 3 months of the financial year-end of the entity.

(i) Each MWEP Partnership Company is responsible for its own administrative, secretariat and accounting support. The University may provide such support on a fee for service basis.

(iii) The Senate approves the expansion of the partnership to include commercialisation of 3rd party owned intellectual property in respect of which the University has no interest, and authorises the General Counsel & University Secretary to arrange for appropriate amendments to be made to the MWEP partnership to effect this approval.
STEERING COMMITTEE ROLE AND RESPONSIBILITIES

Role
To exercise overall supervision of all matters pertaining to the partnership’s business.

Responsibilities
1. The consideration and determination of:
   a all matters relating to general policies and procedures, methods of operation and codes of conduct, e.g. funding strategy and funds allocation, reporting requirements and profit distribution
   b the criteria for funding the partnership’s business and investments;
   c the form of the terms and conditions relating to investment opportunities and annual budgets;
2. The consideration, revision and approval or disapproval, of business plans and budgets prepared and submitted to it.
3. The appointment, termination and substitution of the Investment Committee Representatives and Investment Committee Chairperson.
4. The creation of the Executive Bonus Pool.
5. The remuneration and incentivisation of the Investment Committee.
6. The approval of Key Personnel substitutions.
7. The consideration and, if so required, the determination of any matter relating to the partnership’s business which may be referred to it.

Composition
The partners appoint four Representatives, two from each partner. Substitute and alternate Representatives can be appointed. A Chairperson is elected annually.

Committee Meetings
1. (meetings): There must be at least two meetings of the Steering Committee held in any Financial Year.
2. (additional meetings): Any additional meeting of the Steering Committee must be convened following any written request of any Representative made to the chairperson of the Steering Committee.
3. (venue): Meetings of the Steering Committee must be held at any venue agreed at any time by the Representatives.
4. (methods): Any meetings of the Steering Committee may be conducted by written resolution, telephone conference, video conference or any similar means of audio or audio-visual communication.
5. **(notices):** Each Representative must receive prior written notice of any meeting of the Steering Committee, together with an agenda, at least five Business Days prior to that meeting, except where otherwise agreed by all Representatives.

6. **(agenda):** The agenda for any meeting of the Steering Committee must be decided by the chairperson of the Steering Committee or, in the case of a meeting convened at the request of any Representative, by that Representative.

7. **(resolutions):** The Steering Committee must not pass any resolution at any meeting where notice of that resolution has not been given in the prior agenda for that meeting.

**Meeting Quorum**

1. **(minimum attendance):** Three Representatives make a quorum, however:
   a. at least one Representative must have been appointed by Murdoch; and
   b. at least one Representative must have been appointed by Westscheme.

2. **(meeting adjournment):** A meeting of the Steering Committee must be adjourned, if a quorum is not present within 30 minutes of the time specified for the meeting, to a date and time five Business Days following the time of, and at the same place as, the original meeting to be notified to all Representatives.

3. **(adjournment quorum):** Any Representatives present at any meeting adjourned because of insufficiency of quorum creates a quorum for that adjourned meeting quorum.

**Voting**

1. **(voting power):** Each Representative is entitled to cast one deliberative vote at any meeting of the Steering Committee.

2. **(chairperson):** The chairperson of the Steering Committee is not entitled to any casting vote in the event of any equality of votes at any meeting of the Steering Committee.

3. **(equality of votes):** In the event of any equality of votes at any meeting of the Steering Committee either Partner may within 15 Business Days of the relevant vote submit the matter on which there is an equality of votes to arbitration.

**Unanimous Consent**

The unanimous consent of the Steering Committee is required for any decision relating to the Partnership undertaking any business activity not specified in the Business Undertaking Schedule.

**Representative Remuneration**

Any Representative is not entitled to payment of any fee, salary or other remuneration or reimbursement of any cost by the Partnership or any other person for or incurred in the attendance of any meeting of the Steering Committee by that Representative, except with the Unanimous Consent of the Partners.
Duties of the Commercial Manager

Subject to the overall supervision of, and in compliance with the strategies and policies established from time to time by, the Investment Committee the responsibilities of the Commercial Manager include:

(a) (planning documents): to be available from time to time for consultation by the Investment Manager on the preparation of the Planning Documents;
(b) (consultation): to be available from time to time for consultation by the Investment Manager on such other matters as the Investment Manager may wish to consult with the Commercial Manager; and
(c) (recommendations): to make recommendations to the Steering Committee with respect to each Planning Document and all other matters submitted by the Investment Manager and all matters submitted by the Investment Committee

INVESTMENT MANAGER ROLE AND RESPONSIBILITIES

Role

Performing the partnership’s day to day management, functions and activities.

Main Responsibilities

1. supervision of daily administrative, commercial and financial business activities;
2. performing operational management;
3. making decisions relative to personnel matters, including engagement and termination of agents
4. identifying, locating, investigating, assessing and evaluating commercialisation opportunities;
5. presenting and recommending such commercialisation opportunities to the Investment Committee:
6. structuring and negotiating the terms and conditions of the funding of commercialisation opportunities
7. assisting the Investment Committee with the selection, prioritisation, execution and monitoring of commercialisation opportunities;
8. assisting in areas such as strategy, sales and marketing and relationship management;
9. entering into, and monitoring the performance of each party to, each Research Agreement and Licence Agreement;
10. managing and monitoring the discovery and protection of all Investment Associated Intellectual Property and all the Intellectual Property and technology developed
11. attending at and providing periodic reports to the Investment Committee on each opportunity;
12. preparing and setting the timetables, milestones, business plans and budgets for each opportunity and monitoring its performance
13. ensuring that each opportunity is appropriately resourced;
14. acting as first point of contact on all matters relating to project management;
15. managing the portfolio of projects;
16. keeping the partnership’s books of account
17. establishing and maintaining bank accounts
18. hold all Investment Associated Intellectual Property pursuant to any Licence Agreement
19. acting as custodian for documents of title belonging to the partnership
Purpose:
To address the action item from the Senate Minutes of 22 February 2005.

The PVC RM is to prepare a report addressing the Guild of Students issues relating to the decrease in size of the redeveloped refectory area.

Background and summary:
Management began evaluating a variety of alternative proposals in late September 2004 to establish a Chiropractic Clinic on campus. Up to this time the generally accepted proposal was to purchase and fit out a transportable at a cost of $1.1m and then relocate the clinic to a new Health Sciences complex to be constructed near Murdoch Drive over the next 2 years.

Management used this process as a catalyst to consider a series of space shuffles within the University. These space shuffles included the possibility of relocating the Guild Tavern (and other Guild facilities) to the Bush Court area and converting the whole Amenities Building into a Health Science Complex. Discussions with the Guild on these issues commenced in early October 2004.

After considering the options available management ultimately put forward a proposal which includes relocating the bookshop to an area comprising part of the existing Refectory and using the current bookshop location as the Chiropractic Clinic.

The proposal to move the Bookshop and establish the Chiropractic Clinic was put to SEG and supported unanimously. The proposal was then put to the Resources Committee for debate. The Guild of Student representative raised two concerns which were addressed at that meeting. One of these concerns related to the layout of the entrances to the bookshop (ie capacity to handle peak periods at the commencement of term) and the other concern related to the suitability of the Tavern and Chiropractic Clinic being located in the same general area. These concerns were not those subsequently raised on the Senate Floor.

On the day of the Senate meeting the Guild of Students sponsored a protest and published a flyer to hand out to interested parties. The flyer presented a view that the staff Club Murdoch facility should be shifted into the Refectory area and the Tavern should be relocated into the Club Murdoch area. The Guild gathered 300 signatures on a petition against proceeding with the proposed Bookshop relocation and in favour of relocating the Tavern to Club Murdoch.

On the Senate floor the Guild of Students representatives raised two issues being:

- The proposed changes halved the size of the Refectory and significantly reduced the number of seats available for students to use. This reduced the facilities available for students.
- The reduction in size of the Refectory (and reduced seating for students) would be supported by the Guild if the Guild Tavern was relocated to Club Murdoch.
Issues and alternatives considered:

*The area of the Refectory will be cut in half and capacity will be reduced:*

The current total internal area of the refectory is 701 sq meters. This will be reduced to 541 sq meters. Of the 160 sq meters space reduction, 130 sq meters is space currently used for seating. In addition a veranda area of 129 sq meters currently used for outside seating will also be converted into bookshop use. This equates to a total of 259 sq meters of area used for seating in the current configuration of the Refectory that will not be used for seating in the reconfigured seating arrangements.

To replace the seating capacity lost to the Bookshop, the following is to be implemented as part of the current proposal:

- Upgrade of the northern courtyard (including some all weather seats) to create a new area to accommodate diners and improve the alfresco experience
- Increase in seating capacity in the southern courtyard (including creating some new all weather seating) and an upgrade of the area to improve the alfresco experience
- Addition of seating capacity in the Bush Court veranda outside the Refectory
- Addition of some new bench seating in the Refectory area.

At the date of writing this report there were 288 seats in the Refectory area. Of these 244 could be considered all weather.

Under the proposed changes the reconfigured Refectory would have 282 seats of which 206 are all weather. This represents a reduced capacity of 6 seats in total however the number of all weather seats has reduced by 38.

Management had plans to make more seating in the southern courtyard all weather and expand seating availability in Bush Court however our consultation process with the food vendors in the Refectory indicated that the winter period was the quietest time for the Refectory and demand for all weather seats is unlikely to exceed the 206 available unless demand during this time period increased from historical levels.

Rather than spend funds unnecessarily on all weather seats, management have focused on improving the alfresco facilities and flow through of seating facilities into Bush Court. This appears to better reflect demand patterns during the peak times and has the benefit of providing a more obvious link for students to either sit inside, use alfresco seating or flow through to the Bush Court lawn during lunch periods.

Should demand patterns change and the 206 all weather seats prove to be unsatisfactory then a contingency plan exists that allows for the creation of more all weather seats. Of course management would welcome a situation where demand has improved as it would be a reflection that the new Bookshop location, new Ticketmaster facility and improved alfresco experience were welcomed by patrons.

*The staff facility at Club Murdoch should be moved into the refectory (ie instead of the Bookshop) and the Guild Tavern moved into Club Murdoch.*

Management and the Guild have been exploring a variety of proposals to shift the tavern into the Bush Court area. The Guild had represented that (other than the University constructing a new purpose built Guild building incorporating a tavern) the “only” move they would consider would be one to Club Murdoch. The proposal to move the Tavern into the Club Murdoch location was reviewed as part of the overall evaluation of possibilities by management but was considered not viable (as part of the current series of moves) for a variety of reasons. These reasons were discussed with the Guild. These included:

- The current tenant at Club Murdoch has slowly built up a viable business at the Club and staff support for the facility has continued to grow. Forcing the tenant and staff to move to a facility with decreased amenities would create a whole series of other problems and objections.
- Relocating the Tavern does not free up a viable space for the Chiropractic Clinic. Relocating the Bookshop to the Tavern area so the Chiropractic Clinic could occupy the bookshop area would mean doubling up on cost and still only achieve the move of the Bookshop from one undesirable location to another undesirable location.
Discussions with the Guild stalled as the above reasons were not considered appropriate reasons for not proceeding with their proposal. As moving the Tavern was not the main priority driving the space shuffle, with time pressures on the construction period and requirement to have the Clinic open in July 2005, management proceeded to evaluate possibilities and in December 2004 ultimately settled on the proposal of shifting the Bookshop.

Once the Bookshop proposal was settled the Guild view changed and they expressed a desire to explore other options for the relocation of the Tavern (but haven’t given up on the possibility that an option may surface that makes Club Murdoch available). The consultation process has been ongoing since October 2004 and is continuing however management focus over the last few weeks has been on delivering the Peel campus on time, addressing the many short term accommodation issues leading up to students and staff returning to campus and planning the execution of the Chiropractic/Bookshop project within the required timelines.

Relocating the Tavern to the Bush Court area is a highly desirable outcome generally supported by management (subject to financial and logistics issues being adequately addressed). However the current proposal being pushed by the Guild is not a quick fix and presents a series of issues not easily overcome in the short term.
## Senate Resolution S/54/2004

### Report of Documents to Which the Official Seal Has Been Applied

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<tr>
<th>Date</th>
<th>Other Party</th>
<th>Subject Matter</th>
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