1. DECLARATIONS OF INTEREST (SENATE STANDING ORDERS CLAUSE 4.2)
Barbara Whelan declared an interest with regard to that part of the amending legislation that will abolish the Guild President’s membership of Senate.

2. CONFIRMATION OF MINUTES
Not applicable.

3. UNIVERSITIES LEGISLATION AMENDMENT BILL
Consequent on Senate resolution S/16/2005 the committee approved\(^1\) various clauses in an earlier draft of the Bill noted as “No issue” in an analysis prepared by the General Counsel & University Secretary (version 1.1, dated 23/03/2005).

As a result of further discussions between the General Counsel & University Secretary, representatives of the Minister and the other universities and the Parliamentary Counsel, a revised draft of the Bill was produced\(^2\).

The committee considered a further analysis of the amended draft Bill prepared by the General Counsel & University Secretary (version 2.0, dated 23/04/2005), noting that he recommended that the University approve the draft Bill (as amended), subject to correction of some suggested grammatical improvements and clarification of the status of a vacancy arising if Senate exercised its power to remove a member in breach of one of the new duties.

Resolved: (i) In accordance with Senate resolution S/16/2005, to approve draft D03 of the Universities Legislation Amendment Bill 2005 (WA) (“Bill”) insofar as it proposes to amend the Murdoch University Act.

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2. Draft described as D03, PDF copy attached.
subject to the following:

(a) Ideally, the Bill should be amended to take into account the grammatical suggestions contained in General Counsel & University Secretary’s eMail message dated 24/04/2005. However, if the Parliamentary Counsel is not so minded, this will not affect the University’s approval.

(b) The draft Bill should be expanded to clarify the status of a vacancy arising if Senate suspends and/or removes a member under proposed new section 15A, to make it clear that a casual vacancy arises if a member is removed, but no vacancy arises if a member is suspended pending the vote on a removal motion.

(c) If, as a result of a Curtin University query, the Parliamentary Counsel changes the definition of the two-thirds majority required for a resolution to remove, the University requests that it be consulted before any such changed definition is applied to the Murdoch University Act.

Secretary’s note:

On 05/05/2005, DEST confirmed that the contents of the draft Bill, when enacted, will achieve compliance with the National Governance Protocols, subject to the following comments:

- Majority of external members (new paragraph 12(2)(b)): The University will need to take care that at all times the Senate comprises a majority of external members. NB. someone working on a 40% load would not be regarded as ‘external’. This is addressed in the terms of reference of the Nominations Committee and is monitored as and when vacancies in the appointed and co-opted categories arise.

- The defence for ‘honest’ action (new section 17B): DEST warned that members of Senate should be advised that this is not the only protection, e.g. the University has Directors’ and Officers’ Liability insurance in place. The General Counsel & University Secretary proposes to address this in a revised version of the Senate Code of Conduct.

4. NEXT MEETING

Not applicable.
At your request, an electronic copy of this current draft of the attached legislation is enclosed. You need to be aware of the following —

- the legislation may not be/is not in its final form;
- the electronic copy is produced in Microsoft Word 97 format or PDF format; it will not be provided in any other format;
- the electronic copy **is not to be used** to produce amended versions of the draft legislation; and
- the electronic copy of this draft **is not to be used** as a substitute for the authorized printed version that the printer makes available once the legislation is in force.

**The enclosed electronic copy is provided on the above basis.**

If this Office becomes aware of any misuse of this copy, the policy of providing electronic versions of draft legislation will be discontinued immediately.
Western Australia

DRAFT 3

Universities Legislation Amendment Bill 2005

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Universities Legislation Amendment Bill 2005

A Bill for

An Act to amend —

- the Curtin University of Technology Act 1966;
- the Edith Cowan University Act 1984;
- the Murdoch University Act 1973;
- the University of Notre Dame Australia Act 1989;
- the University of Western Australia Act 1911.

The Parliament of Western Australia enacts as follows:
Part 1 — Preliminary

1. Short title

This Act may be cited as the *Universities Legislation Amendment Act 2005*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.
Part 2 — *Curtin University of Technology Act 1966*

3. **The Act amended**

The amendments in this Part are to the *Curtin University of Technology Act 1966*. [* Reprinted as at 28 July 1999. For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 98 and Act No.*]

4. **Section 9 amended**

(1) Section 9(1)(ia), (j) and (k) are deleted and the following paragraphs are inserted instead —

```
(j) up to 3 persons appointed by the Council from persons —
   (i) who are members of bodies that represent the interests of the University in places other than the metropolitan area; and
   (ii) who are not staff or students of the University;

and

[Thanks for your email of 19 April. Is this more appropriate?]

(k) one member of the Academic Board of the University established by Statute, elected by and from the Academic Board.

[Thanks for the comments in your email of 19 April from which I understand the position to be that the Chair is not appointed by the Council.]

The relevant principle is that an officer should not be removed from office by anyone other than the person or body who appointed the person to the office. (The protocol is not relevant to this principle). The effect of
proposed s. 10AA is that the Council would have power to remove a member from office on certain grounds.

Curtin states “The Council could not, however, technically remove the Chair of the Academic Board, since that person holds office under different arrangements”.

However, if a Council member were to be the Chair of the AB, this would “technically” enable the Council to remove the Chair from office, which is the very situation sought to be avoided by the proposed drafting. The difficulties which would arise from requiring the Chair as ex officio member can be avoided by requiring a “member” of the Academic Board to be a Council member. The suggested provision does not prevent the person who happens to be the Chair from being a Council member, but if that person is otherwise removed from office, then, another member of the AB can be the Council member.

UWA noted this outcome in asking for a provision for “one member of the Academic Board” to be a Senate member despite UWA’s noting that it could be asserted that the UWA Senate does appoint the Chair of the AB under Statute 19 and the ability to remove an unsuitable Chair resides with both the Board and the Senate.]"

(2) After section 9(1) the following subsections are inserted —

“(2) Of the members —

(a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector); and

(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).

(3) The majority of members of the Council must be persons who are not members of the staff or students of the University.

5.

5. **Transitional provisions**

(1) In this section —

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

“**member**” means a member of the Council of the Curtin University of Technology;

“**deleted section 9(1)(ia), (j) or (k)**” means section 9(1)(ia), (j) or (k) of the *Curtin University of Technology Act 1966* as those provisions were in effect immediately before commencement day.

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

6. **Section 9A amended**

Section 9A(2) is amended by deleting “branch of which he is chairman of the Board or by the Board of which he is nominated ceases to exist as a branch.” and inserting instead —

“the member was appointed from the members of a body which has ceased to exist.

[Note change.]
9B. Members’ duties

Schedule 1A Division 1 has effect.

8. Section 10 amended

After section 10(e) the following paragraphs are inserted —

"(ea) is removed from office by the Council under section 10AA;
(eb) is, or becomes, disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001 of the Commonwealth;"

9. Section 10AA inserted

After section 10 the following section is inserted —

[Reflects changes to cl. 29.]

10AA. Removal of members for breach of certain duties and suspension pending removal

(1) The Council may —

(a) remove from office a member for breach of a duty mentioned in Schedule 1A clause 1(1), 2(1) or 3;
(b) suspend from office a member who is alleged to have breached a duty mentioned in Schedule 1A clause 1(1), 2(1) or 3 until the motion for removal is put to the vote.

(2) The removal or suspension from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member
concerned be removed or suspended from office for breach of duty) was duly given.

(3) Despite section 13(1), the removal or suspension of a member from office may be effected only if the motion for removal or suspension is supported by a majority comprising enough of the members for their number to be at least 2/3 of the total number of offices (whether vacant or not) of member for the time being.

[Clarifies DEST requirement in relation to vacancies.]

(4) The motion for removal or suspension must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

(5) If the member to whom the motion for removal or suspension refers does not attend the meeting, a reasonable opportunity to reply to the motion is to be taken to have been given if notice of the meeting has been duly given.

(6) The Council cannot remove or suspend from office a member for breach of a duty mentioned in Schedule 1A clause 1(1), 2(1) or 3 except in accordance with this section.

(7) A person must not vote on any question relating to the person’s removal or suspension from office by the Council for the breach of a duty mentioned in Schedule 1A clause 1(1), 2(1) or 3, or be present while the matter is being considered at a meeting.

(8) This section applies only in relation to a breach of a duty mentioned in Schedule 1A clause 1(1), 2(1) or 3 that occurs after the Universities Legislation Amendment Act 2005 comes into operation.
(9) A person does not breach a duty mentioned in
Schedule 1A clause 1(1)(a), (b) or (c) by doing or
omitting to do anything in compliance with a direction
given to the person in exercise of a power conferred by
a written law.

(10) Subsection (9) does not extend to the manner in which
a thing is done or omitted if it is done or omitted in a
manner that is contrary to Schedule 1A clause 1(1)(a),
(b) or (c) and the direction did not require that it be
done in that manner.

10. Section 12 replaced
Section 12 is repealed and the following section is inserted
instead —

12. Disclosure of interests
Schedule 1A Division 2 has effect.

11. Section 21AA inserted
After section 21 the following section is inserted in Part 1
Division 2 —

21AA. Relief of members from liability
If, in any civil proceeding against a person who is or
was a member for negligence, default, breach of trust
or breach of duty in the person’s capacity as a member,
it appears to the court that the person —
(a) is, or may be, liable in respect of the
negligence, default or breach;
(b) has acted honestly; and
(c) ought fairly to be excused for the negligence, default or breach having regard to all the circumstances of the case, including those connected with the person’s appointment, the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

[As discussed with Mr Pease on 12.4.05.]

12. Schedule 1A inserted

After Schedule 1 the following Schedule is inserted —

Schedule 1A — Council members

[s.9B, 10AA, 12]

Division 1 — Duties

1. Duties

(1) Each member has the following duties —

(a) the duty to at all times act honestly in the performance of the functions of a member, whether within or outside the State;

(b) the duty to at all times exercise the degree of care and diligence in the performance of the functions of a member, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Council’s circumstances;

(c) the duty to at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member;

[Note change: as discussed with Mr Pease on 12.4.05.]

(d) the duty to not, whether within or outside the State, make improper use of information acquired by virtue of the position of member to gain, directly or
indirectly, an advantage for any person or to cause detriment to the University;

(e) the duty to not make improper use of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.

(2) Nothing in subclause (1) or section 10AA or 12 affects —

(a) any other duty a member may have under any other law; or

(b) the operation of any other law in relation to such a duty.

[Note changes to cl. 1]

Division 2 — Disclosure of interests

2. Disclosure of interests

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

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

3. Voting by interested members

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

(a) must not vote whether at a meeting or otherwise —

(i) on the matter; or

(ii) on a proposed resolution under clause 4 in respect of the matter, whether relating to that member or a different member;

and

(b) must not be present while —

(i) the matter; or
(ii) a proposed resolution of the kind referred to in paragraph (a)(ii),
is being considered at a meeting.

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

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

(a) specifies the member, the interest and the matter;
and

(b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

5. **Quorum where clause 3 applies**

Despite section 13(1), if a member is disqualified under clause 3 in relation to a matter, a quorum is present during the consideration of the matter if at least 9 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

**[Previous (2) omitted on Mr Pease’s request 12.4.05 to maintain independence of universities.]**

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

(1) The Minister may, on the application of a member, by writing declare that clause 3 or 5 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

**[Note change: on Mr Pease’s request 12.4.05 to maintain independence of universities.]**

(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.
Part 3 — Edith Cowan University Act 1984

13. The Act amended

The amendments in this Part are to the Edith Cowan University Act 1984.*

[* Reprinted as at 20 August 2004.
   For subsequent amendments see Act No.*]

14. Section 5 amended

Section 5(2)(e) is amended as follows:

(a) after “personal property” by inserting the following —

   “acquired or held by the University as it thinks fit subject only, in respect of property”;

(b) by deleting “University as it thinks fit subject only” and inserting instead —

   “University, ”.

15. Section 9 amended

(1) Section 9(1)(g) and (h) are deleted.

(2) Section 9(3) is repealed and the following subsections are inserted instead —

   “

   (3) The following persons are not eligible to be a member under subsection (1)(a), (aa) or (i) —

      (a) person who is a member of the staff or otherwise engaged by the University;

      (b) an enrolled student.

   (4) The following persons are not eligible to be a member under subsection (1)(e) —
(a) a full time member of the staff of the University;
(b) a part time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full time member of staff.

(5) The following persons are not eligible to be a member under subsection (1)(f) —
(a) a full time member of the staff of the University;
(b) a part time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full time member of staff;
(c) an enrolled student who is enrolled on a full time basis.

(6) Of the members —
(a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector); and
(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).

16. Transitional provisions

(1) In this section —

“commencement day” means the day on which the Universities Legislation Amendment Act 2005 comes into operation;
“member” means a member of the Council of the Edith Cowan University;
“deleted section 9(1)(g) or (h)” means section 9(1)(g) or (h) of the Edith Cowan University Act 1984 as those provisions were in effect immediately before commencement day.

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

17. Section 10 amended

(1) Section 10(2) is amended by deleting “subsections (3) and (4)” and inserting instead —
“subsections (3), (4) and (4a), ”.

(2) After subsection 10(4) the following subsection is inserted —
“(4a) A member who is removed from office by the Council under section 11A is not eligible to be a member again until 5 years have elapsed since the removal.”.

18. Section 10A inserted

After section 10 the following section is inserted —
“10A. Members’ duties

Schedule 1 Division 1 has effect.”.

19. Section 11 amended

After section 11(e) the following paragraphs are inserted —
“(ea) is removed from office by the Council under section 11A;
is, or becomes, disqualified from managing corporations under Part 2D.6 of the
Corporations Act 2001 of the Commonwealth;
"

20. Section 11A inserted

After section 11 the following section is inserted —

[Reflects changes to cl. 29.]

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

(1) The Council may —
   (a) remove from office a member for breach of a
duty mentioned in Schedule 1 clause 1(1), 2(1)
or 3;
   (b) suspend from office a member who is alleged
to have breached a duty mentioned in
Schedule 1 clause 1(1), 2(1) or 3 until the
motion for removal is put to the vote.

(2) The removal or suspension from office may be effected
only at a meeting of the Council of which notice
(including notice of the motion that the member
concerned be removed or suspended from office for
breach of duty) was duly given.

(3) Despite section 14(1), the removal or suspension of a
member from office may be effected only if the motion
for removal or suspension is supported by a majority
comprising enough of the members for their number to
be at least 2/3 of the total number of offices (whether
vacant or not) of member for the time being.

[Clarifies DEST requirement in relation to vacancies.]

(4) The motion for removal or suspension must not be put
to the vote of the meeting unless the member
concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

(5) If the member to whom the motion for removal or suspension refers does not attend the meeting, a reasonable opportunity to reply to the motion is to be taken to have been given if notice of the meeting has been duly given.

(6) The Council cannot remove or suspend from office a member for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 except in accordance with this section.

(7) A person must not vote on any question relating to the person’s removal or suspension from office by the Council for the breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3, or be present while the matter is being considered at a meeting.

(8) This section applies only in relation to a breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 that occurs after the Universities Legislation Amendment Act 2005 comes into operation.

(9) A person does not breach a duty mentioned in Schedule 1 clause 1(1)(a), (b) or (c) by doing or omitting to do anything in compliance with a direction given to the person in exercise of a power conferred by a written law.

(10) Subsection (9) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to Schedule 1 clause 1(1)(a), (b) or (c) and the direction did not require that it be done in that manner.

"
21. **Section 13 replaced**

Section 13 is repealed and the following section is inserted instead —

“13. **Disclosure of interests**

Schedule 1 Division 2 has effect.

”.  

22. **Section 17A inserted**

After section 17 the following section is inserted —

“17A. **Relief of members from liability**

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

(a) is, or may be, liable in respect of the negligence, default or breach;

(b) has acted honestly; and

(c) ought fairly to be excused for the negligence, default or breach having regard to all the circumstances of the case, including those connected with the person’s appointment,

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

[As discussed with Mr Pease on 12.4.05.]

”.  

23. **Schedule 1 inserted**

After section 53 the following Schedule is inserted —
Schedule 1 — Council members

Division 1 — Duties

1. Duties

(1) Each member has the following duties —

(a) the duty to at all times act honestly in the performance of the functions of a member, whether within or outside the State;

(b) the duty to at all times exercise the degree of care and diligence in the performance of the functions of a member, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Council’s circumstances;

(c) the duty to at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member;

[Note change: as discussed with Mr Pease on 12.4.05.]

(d) the duty to not, whether within or outside the State, make improper use of information acquired by virtue of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;

(e) the duty to not make improper use of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.

(2) Nothing in subclause (1) or section 11A or 13 affects —

(a) any other duty a member may have under any other law; or

(b) the operation of any other law in relation to such a duty.

[Note changes to cl. 1]
Division 2 — Disclosure of interests

2. Disclosure of interests

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

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

3. Voting by interested members

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

(a) must not vote whether at a meeting or otherwise —

(i) on the matter; or

(ii) on a proposed resolution under clause 4 in respect of the matter, whether relating to that member or a different member;

and

(b) must not be present while —

(i) the matter; or

(ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

4. Clause 3 may be declared inapplicable

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

(a) specifies the member, the interest and the matter; and

(b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.
5. **Quorum where clause 3 applies**

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

*[Previous (2) omitted on Mr Pease’s request 12.4.05 to maintain independence of universities.]*

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

(1) The Minister may, on the application of a member, by writing declare that clause 3 or 5 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

*[Note change: on Mr Pease’s request 12.4.05 to maintain independence of universities.]*

(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.
Part 4 — Murdoch University Act 1973

24. The Act amended

The amendments in this Part are to the Murdoch University Act 1973*.

[* Reprinted as at 26 February 1999.
For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 260 and Act No.]

25. Section 12 amended

Section 12(1) and (2) are repealed and the following subsections are inserted instead —

"(1) The membership of Senate shall consist of —

(a) the persons holding or acting in the office of Chancellor and of Vice-Chancellor respectively;

(b) 3 persons elected by and from the members of the full-time academic staff of the University in the manner prescribed by Statute;

(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;

(d) 2 persons elected by and from the students in the manner prescribed by Statute;

(e) 2 persons elected by Convocation from the members of Convocation in the manner prescribed by Statute;

(f) 6 members appointed by the Governor;
(g) up to 3 persons as are co-opted to serve as members of the Senate by an absolute majority of the other members.

[As confirmed by Mr Pease on 14.4.05, the ineligibility of staff of other tertiary institutions is not to be re-enacted in view of the greater flexibility given by proposed (2).]

(2) The following persons are not eligible to be a member of the Senate under subsection (1)(e), (f) or (g) —

(a) a full time member of the staff of the University;

(b) a part time or casual employee of the University who works for at least 50% of the minimum time required to be worked by a full time member of staff;

(c) a student.

(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).

26. Transitional provisions

(1) In this section —

“commencement day” means the day on which the Universities Legislation Amendment Act 2005 comes into operation;
“new section 12(1)” means section 12(1) of the Murdoch University Act 1973 as that provision is in effect on commencement day;

“repealed section 12(1)” means section 12(1) of the Murdoch University Act 1973 as that provision was in effect immediately before commencement day;

“Senate” means the Murdoch University Senate.

(2) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(b) or (c) cease to be members of the Senate on commencement day.

(3) The persons who, immediately before commencement day, were members of the Senate under repealed section 12(1)(a) continue in office as members of the Senate under new section 12(1)(a) on and from commencement day.

(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 commencement day.

(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 commencement day.

(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 commencement day.

(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 commencement day.

(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 commencement day.

(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 commencement day.

(10) A person who, under this section, continues in office as a
member of the Senate on and from commencement day,
continues in office for the balance of the term of office that
applied to the person immediately before commencement day.

[(10) is in response to Mr Pease’s request.]

27. Section 14A inserted

After section 14 the following section is inserted —

"14A. Duties of Senate members

Schedule 1 Division 1 has effect.

[This clause and changes to opening words of Sch. 1 cl. 1(1) further to Mr
Pease’s request of 14.4.05.]

28. Section 15 amended

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

"(ca) is, or becomes, disqualified from managing
corporations under Part 2D.6 of the
Corporations Act 2001 of the Commonwealth;"

(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.

29. Section 15A inserted

After section 15 the following section is inserted —

"15A. Removal of Senate members for breach of certain duties and suspension pending removal

[The provisions relating to suspension have been inserted on the request of Mr Pease on 12.4.05.]

(1) The Senate may —

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

(b) suspend from office a member of the Senate who is alleged to have breached a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 until the motion for removal is put to the vote.

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

(3) Despite section 12(6), the removal or suspension from office may be effected only if the motion for removal or suspension is supported by a majority comprising enough of the members of the Senate for their number
to be at least 2/3 of the total number of offices (whether vacant or not) of member of the Senate for the time being.

[Clarifies DEST requirement in relation to vacancies.]

(4) The motion for removal or suspension must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

(5) If the member to whom the motion for removal or suspension refers does not attend the meeting, a reasonable opportunity to reply to the motion is to be taken to have been given if notice of the meeting has been duly given.

(6) The Senate cannot remove or suspend from office a member of the Senate for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 except in accordance with this section.

(7) A person must not vote on any question relating to the person’s removal or suspension from office by the Senate for the breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3, or be present while the matter is being considered at a meeting.

(8) This section applies only in relation to a breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 that occurs after the Universities Legislation Amendment Act 2005 comes into operation.

(9) A person does not breach a duty mentioned in Schedule 1 clause 1(1)(a), (b) or (c) by doing or omitting to do anything in compliance with a direction given to the person in exercise of a power conferred by a written law.
(10) Subsection (9) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to Schedule 1 clause 1(1)(a), (b) or (c) and the direction did not require that it be done in that manner.

30. **Sections 17A and 17B inserted**

After section 17 the following sections are inserted —

```
17A. **Disclosure of interests**

Schedule 1 Division 2 has effect.

17B. **Relief of Senate members from liability**

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

(a) is, or may be, liable in respect of the negligence, default or breach;

(b) has acted honestly; and

(c) ought fairly to be excused for the negligence, default or breach having regard to all the circumstances of the case, including those connected with the person’s appointment,

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

[As discussed with Mr Pease on 12.4.05.]
```

31. **Schedule 1 inserted**

After section 34 the following Schedule is inserted —
Schedule 1 — Senate members

[ss. 14A, 15A, 17A]

Division 1 — Duties

1. Duties

(1) Each member of the Senate has the following duties —

(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;

(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;

(c) the duty to at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member of the Senate;

(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 University;

(e) the duty to not make improper use of the position of member of the Senate to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.

(2) Nothing in subclause (1) or section 15A or 17A affects —

(a) any other duty a member of the Senate may have under any other law; or

(b) the operation of any other law in relation to such a duty.
Division 2 — Disclosure of interests

2. Disclosure of interests

(1) 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 and extent of the interest at a meeting of the Senate.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

3. Voting by interested members

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

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

and

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

is being considered at a meeting.

4. Clause 3 may be declared inapplicable

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

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

5. **Quorum where clause 3 applies**

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.

[Previous (2) omitted on Mr Pease’s request 12.4.05 to maintain independence of universities.]

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

(1) The Minister may, on the application of a member of the Senate, 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.

[Note change: on Mr Pease’s request 12.4.05 to maintain independence of universities.]

(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.

""
Part 5 — University of Notre Dame Australia Act 1989

32. The Act amended

The amendments in this Part are to the University of Notre Dame Australia Act 1989*.

[* Reprinted as at 1 June 2001.
For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 471 and Act No. ]

33. Section 3 amended

(1) Section 3 is amended by deleting the definitions of “Archbishop” and “Board”.

(2) Section 3 is amended by inserting the following definitions in the appropriate alphabetical order —

“Board of Directors” means the Board of Directors of the University established under section 15A;

“Board of Governors” means the Board of Governors of the University established under section 14;

“general Trustees” means the Trustees mentioned in section 7(1)(c) and (d);

[Is the Vice-Chancellor to be one of the “general Trustees” or one of the “nominee Trustees (or neither)?]

“nominee Trustees” means the Trustees mentioned in section 7(1)(a), (b) and (c);

“Trustees” means the Trustees mentioned in section 7;”.}

(3) Section 3 is amended in the definition of “Trustees” by deleting “sections 7 and 8;” and inserting instead —

“section 7; ”.
34. **Section 5 replaced**

Section 5 is repealed and the following section is inserted instead —

“5. **Objects of University**

The objects of the University are —

(a) the provision of university education, within a context of Catholic faith and values, that is open to all people;

(b) the provision of an excellent standard of —

(i) teaching, scholarship and research;

(ii) training for the professions; and

(iii) pastoral care for its students.

[For consideration. I would prefer to retain the plural “objects” if possible to avoid consequential amendments to Part 2’s heading and sections 4(4) and (6) and 25B(1).]

35. **Part 3 heading replaced**

The heading to Part 3 is deleted and the following heading is inserted instead —

“**Part 3 — Trustees, officers, Board of Governors and Board of Directors**

36. **Section 7 replaced**

Section 7 is repealed and the following section is inserted instead —
7. Trustees of the University

(1) There are to be Trustees of the University consisting of—

(a) 2 persons nominated by the Roman Catholic Archbishop of the Archdiocese of Perth;
(b) 2 persons nominated by the Roman Catholic Archbishop of the Archdiocese of Sydney;
(c) the Vice-Chancellor ex officio;
(d) 7 persons to be appointed by the nominee Trustees.

(2) A nomination under subsection (1)(a) or (b) is of no effect unless it is first approved by each of the other Trustees.

[Is this the intention or do you mean the general Trustees only or the general Trustees and the VC?
Is approval of each of the Trustees required or can the approval be on a majority vote?

For transitionals, see cl. 50(2).]

37. Section 8 repealed

Section 8 is repealed.

[I have not drafted a “functions of Trustees” provision because the functions mentioned in your requested new s. 8(1)(b) and (c) are already set out in sections 11, 12 and 17.

As to your requested new s. 8(1)(a) “ensuring compliance with the object of the University” is that (a) accurate? (does one comply with an object? and (b) useful, given that all the bodies and officers of the University should have regard to the object of the University?

As to the repeal of s. 8, please confirm that you do not want a separate provision for casual vacancies.]
38. **Section 9 repealed**
Section 9 is repealed.

39. **Section 10 amended**

(1) Section 10(2) is repealed and the following subsection is inserted instead —

"(2) Subject to sections 11(2) and 12(2), a Trustee who has held office for an initial term is eligible to hold office for a subsequent term or terms as long as any consecutive period of office does not exceed 12 years."

40. **Section 11 amended**

(1) Section 11(2) is amended by inserting after “period” the following —

" , which must not exceed 8 years, that is [Should s. 11(2) specify that the office is held until whichever of the mentioned events occurs first?]

*Please clarify your instruction in relation to proposed s. 10(2) re tenure. On one reading the Chancellor and Deputy Chancellor could hold office up to 20 years.*

(2) Section 11(3) is amended by inserting after “Board” the following —

" of Governors or the Board of Directors ".

41. **Section 12 amended**

(1) Section 12(2) is amended by inserting after “period” the following —

" , which must not exceed 8 years, that is
(2) Section 12(3) is amended by deleting “Board,” and inserting the following instead —

“Board of Governors or the Board of Directors”.

42. Section 14 amended

(1) Section 14(b), (c) and (d) are deleted and the following paragraph is inserted instead —

“

(b) at least 18 other persons who are appointed from time to time by the Trustees.

[Ms Hammond advised on 20.4.05 that the Board of Governors is to have at least 30 members. There would be 12 Trustees.]

(2) Section 14 is amended as follows:

(a) by inserting before “There” the subsection designation “(1)”;  
(b) at the end of section by inserting the following subsection —

“

(2) Subject to sections 11(2) and 12(2), a member of the Board of Governors who has held office for an initial term is eligible to hold office for a subsequent term or terms as long as any consecutive period of office does not exceed 12 years or, in the case of a particular member?, such longer period set by the Trustees.

[Is this your intention or are the Trustees to be able to lengthen the period applicable to all Governors?]“.

43. Section 15 replaced by sections 15, 15A, 15B and 15C

Section 15 is repealed and the following sections are inserted instead —
15. **Function of Board of Governors**
The function of the Board of Governors is to provide advice and support to the Board of Directors.

15A. **Board of Directors**
There is to be a Board of Directors consisting of the following —
(a) the Chancellor ex officio;
(b) the Vice-Chancellor ex officio;
(c) up to 12 other members who are —
   (i) members of the Board of Governors; and
   (ii) appointed by the Trustees to be members of the Board of Directors on the nomination of a committee comprising the Chancellor, the Deputy Chancellor and the Vice-Chancellor.

15B. **Functions of the Board of Directors**
(1) Subject to this Act, the Board of Directors is the governing body of the University.
(2) Except where this Act provides otherwise, the Board of Directors is to exercise all the powers of the University and is to have the entire control and management of the affairs and concerns of the University.

15C. **Duties of Directors and removal for breach**
(1) Each member of the Board of Directors has the following duties —
   (a) the duty to at all times act honestly in the performance of the functions of a member of the Board, whether within or outside the State;
(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 Board, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Board’s circumstances;

(c) the duty to at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or nominating a member of the Board;

(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 Board to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;

(e) the duty to not make improper use of the position of member of the Board to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;

(f) the duty to disclose interests in accordance with rules made by the Trustees under section 19?

[Ms Hammond advised on 20.4.05 that the details in relation to disclosure of interests would be worked out by NDU at an administrative level. Are the words in italics appropriate?]

(2) The Board of Directors may, subject to subsection (3) and in accordance with rules made by the Trustees under section 19?, remove from office a member of the Board mentioned in section 15A(c) for breach of a duty mentioned in subsection (1).

[Do you want the words in italics or some other provision linking to the procedural requirements for taking this step (which are set}
(3) The removal from office may be effected only if the motion for removal is supported by a majority comprising enough of the members of the Board of Directors for their number to be at least 2/3 of the total number of offices (whether vacant or not) of member of the Board.

(4) This section applies only in relation to a breach of a duty mentioned in this section that occurs after the *Universities Legislation Amendment Act 2005* comes into operation.

(5) Nothing in this section affects —

(a) any other duty a member of the Board of Directors may have under any other law; or

(b) the operation of any other law in relation to such a duty.

44. **Section 16 replaced**

Section 16 is repealed and the following provision is inserted instead —

```
16. **Delegation**

(1) The Board of Directors may delegate to any committee or officer of the University any power or duty of the Board of Directors under another provision of this Act.

(2) The delegation must be in writing and executed by the Board of Directors.

(3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

[However, if you want the ability to subdelegate I need specific instructions to that effect.]
```
(4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(5) Nothing in this section limits the ability of the Board of Directors to perform a function through an officer or agent.

[As discussed with Ms Hammond on 20.4.05, this is the current standard delegation provision. The Interpretation Act s. 59 and the common law on delegation are also relevant.

For transitionals, see cl. 50(3).]

45. Section 17 amended

Section 17(3) is amended by deleting “Trustees, upon the recommendation of the Board” and inserting instead —

“Board of Directors, on the nomination of the Trustees.”

[For transitionals, see cl. 50(4).]

46. Section 18 amended

Section 18(2) is amended by deleting “the academic principal of the University.” and inserting instead —

“responsible for academic leadership within the University.”

47. Section 19 replaced

Section 19 is repealed and the following section is inserted instead —
19. Rules

The Trustees may, subject to this Act, make rules —

(a) providing for the manner, and terms and
conditions of appointment and the removal or
retirement of the general Trustees and the
nominee Trustees;

(b) fixing the maximum number of members of the
Board of Governors;

(c) providing for the manner, terms and conditions
of appointment and the removal or retirement
of members of the Board of Governors
mentioned in section 14(b);

(d) providing for the manner, terms and conditions
of appointment and the removal or retirement
of members of the Board of Directors
mentioned in section 15A(c);

(e) providing for the manner in which members of
the Board of Directors are to disclose interests;

(f) providing for the procedure in relation to the
removal of a member of the Board of Directors
under section 15C(2);

[Do you want suggested (e) and (f)?]

(g) regulating the procedure for meetings of the
Trustees, including the quorum for meetings;

(h) regulating the sale by the Board of Directors of
any of the assets of the University; and

(i) providing for the monitoring and assessment of
the performance of the functions of the Board
of Directors or any officer of the University?

[I suggest that “monitoring, assessing and ensuring the
compliance by the University with its object” is too
gvague and does not relate to the bodies or persons
which are responsible for performing the functions that
would achieve the object. For consideration.]
48. Various references to “Board” amended

The provisions mentioned in the Table to this section are amended in each case by inserting after “Board” the following —

“ of Directors ”.

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<thead>
<tr>
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<tbody>
<tr>
<td>s. 20(1), (2) and (3)</td>
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<td>s. 22</td>
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<td>s. 23(1), (2), (3), (4), (5)</td>
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</table>

[The changes to 20(2) and (3) were not mentioned in the instructions but I assume you want these.

For transitionals see cl. 50(5), (6) and (7).]

49. Section 30 replaced

Section 30 is repealed and the following section is inserted instead —

30. Report to the Minister

Within 5 months after the end of each University year the Board of Directors is to transmit to the Minister the auditor’s report on all expenditures from public funds by the University for that year.

[For transitionals see cl. 50(8).]
50. Transitional provisions

(1) In this section —

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

“UNDA Act” means the University of Notre Dame Australia
Act 1989;

“University” has the meaning given to that term in the UNDA
Act section 3.

(2) Instructions are required in relation to the transition of the
current Trustees under current s. 7 to the first set of Trustees
under proposed s. 7. Note that proposed s. 7 can’t work in its
own right to set up the first set because each appointment
(except for the ex officio member) requires approval or
appointment by another set of Trustees.

(3) A delegation of a function of the Board of Governors of the
University that is in effect immediately before commencement
day is, on and from that day, to be taken to be a delegation by
the Board of Directors of a function of the Board of Directors.

(4) The person who was the Vice-Chancellor of the University
immediately before commencement day continues, on and from
that day, as the Vice-Chancellor of the University for the
balance of the term that applied to the person immediately
before that day.

(5) A statute, by-law or regulation made under the UNDA Act
section 20 that is in effect immediately before commencement
day is, on and from that day, to be taken to have been made by
the Board of Directors.

[Requested by Ms Hammond just in case the replacement statutes, by-laws
and regulations are not ready in time.]

(6) On and after commencement day agreements, instruments and
other documents that had effect immediately before that day —
(a) to which the Board of Governors of the University was a party; or
(b) which contain a reference to the Board of Governors of the University,

have effect, by force of this section, as if —

(c) the Board of Directors were substituted for the Board of Governors as a party to the agreement or instrument; and

(d) any reference to the Board of Governors were, unless the context otherwise requires, a reference to the Board of Directors.

(7) An investment common fund established under the UNDA Act section 23 that was in effect immediately before commencement day is, on and after that day, to be treated as if it were established by the Board of Directors.

(8) If, immediately before commencement day, any duty imposed by the UNDA Act section 30 on the Board of Governors has not been complied with in relation to the Board of Governors for any University year that expired before commencement day, that duty subsists and is to be performed by the Board of Directors.
Part 6 — *University of Western Australia Act 1911*

51. **The Act amended**

The amendments in this Part are to the *University of Western Australia Act 1911*.

[* Reprinted as at 11 February 2000. For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 409 and Act No.*]

52. **Sections 8, 10, 10A and 10B replaced by sections 8, 9 and 10**

Sections 8, 10, 10A and 10B are repealed and the following sections are inserted instead —

8. **Senate members**

(1) The Senate shall consist of 21 members as follows —

(a) 4 persons appointed by the Governor;

(b) 4 persons, who are not persons referred to in paragraph (c), elected by Convocation at the time and place and in the manner prescribed by Statute;

(c) 3 persons elected —

(i) by and from persons who hold an ongoing or fixed term appointment at the University as an academic staff member; and

(ii) at the time and place and in the manner prescribed by regulations;

(d) the Chancellor ex officio;

(e) one member of the Academic Board of the University, as established under Statute, elected by and from the Academic Board;
(f) the Vice-Chancellor of the University ex officio;

(g) one member of the council of the Guild, elected by the council;

(h) one person who is enrolled as a student of the University, elected by students so enrolled, elected at the time and place and in the manner prescribed by regulations;

(i) one member of the committee of the Postgraduate Students’ Association, elected by the committee;

(j) 3 persons selected and co-opted as members of the Senate by the other members of the Senate;

(k) one person, elected by and from persons who hold an ongoing or fixed term appointment at the University other than as an academic staff member, elected at the time and place and in the manner prescribed by regulations.

[Current s. 10B (1) requires elections by Convocation to be as prescribed by Statute whereas current s. 10B(2) requires elections of academic staff members, students and other staff members to be as prescribed by regulations. These requirements have been re-enacted in paragraphs (b), (c), (h) and (k).

Would you please confirm whether the Statute and regulation distinction is still appropriate?]

(2) A person who is a principal of any secondary school, or similar educational institution, or is a teacher engaged in such an institution may be appointed or elected, and act, as a member of the Senate, but no more than 2 such persons may be members of the Senate at the same time.

(3) The following persons are not eligible to be a member of the Senate under subsection (1)(c) —
(a) a person who holds an office which from time to time comprises part of the Executive of the University;

(b) the Chair of the Academic Board of the University.

[Further to your email of 21.4.05.]

(4) 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).

(5) The majority of members of the Senate must be persons who are not members of the staff or students of the University.

[As UWA had been proposing to deal with the “external” issue administratively and expressed no firm resolve to have provisions in the legislation, I have not drafted provisions such as see proposed ECU Act s. 9(3) and 9(4) at clause 15(2) of this Bill. Note that Curtin Uni.’s preference “is for the more general statement”.

9. Terms of Senate membership

(1) Subject to section 11, the term of office of a member of the Senate referred to in section 10(a), (b), (c), (j) or (k) is 4 years from the date of the appointment or election of the member or the date the member is selected and co-opted as a member.
(2) Subject to section 11, the term of office of a member of the Senate referred to in section 10(g) or (i) is one year from the date of the election of the member.

[The instructions provided on 11.4.05 do not refer to this change which was requested in the initial instructions.]

(3) Subject to section 11, the term of office of a member of the Senate referred to in section 10(h) is 2 years from the date of the election of the member.

(4) A member of the Senate who has held office by election, appointment or selection and co-option for an initial term is eligible to hold office for a subsequent term or terms as long as any consecutive period of membership does not exceed 12 years.

(5) The Senate may increase the period mentioned in subsection (4) in the case of a particular member if the Senate is of the view that there are exceptional circumstances in that member’s case.

10. **Duties of Senate members**

Schedule 1 Division 1 has effect.

53. **Transitional provisions**

(1) In this section —

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

“**new section 8(1)**” means section 8(1) of the *University of Western Australia Act 1911* as that provision is in effect on commencement day;

“**repealed section 10**” means section 10 of the *University of Western Australia Act 1911* as that provision was in effect immediately before commencement day;

“**Senate**” means the University of Western Australia Senate.
(2) The persons who, immediately before commencement day, were members of the Senate under repealed section 10(a) continue in office as members of the Senate under new section 8(1)(a) on and from commencement day.

(3) The persons who, immediately before commencement day, were members of the Senate under repealed section 10(b) or (e) continue in office as members of the Senate under new section 8(1)(b) on and from commencement day.

[This now continues the Warden as a person “elected by Convocation”.]

(4) The persons who, immediately before commencement day, were members of the Senate under repealed section 10(c) continue in office as members of the Senate under new section 8(1)(c) on and from commencement day.

(5) The persons who, immediately before commencement day, were members of the Senate under repealed section 10(d), (f), (g), (h), (i), (j) or (l) respectively continue in office as members of the Senate under new section 8(1)(d), (e), (f), (g), (h), (i) or (l) respectively on and from commencement day.

(6) The persons who, immediately before commencement day, were members of the Senate under repealed section 10(k) continue in office as members of the Senate under new section 8(1)(k) on and from commencement day.

(7) A person who, under this section, continues in office as a member of the Senate on and from commencement day, continues in office for the balance of the term of office that applied to the person immediately before commencement day.

[(7) reflects cl. 26(10).]

54. Section 11 amended

After section 11(c) the following paragraphs are inserted —

“(ca) is removed from office by the Senate under section 11A;
55. **Section 11A inserted**

After section 11 the following section is inserted under the heading relating to the Senate —

"[Reflects changes to cl. 29.]

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

(1) The Senate may —

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

(b) suspend from office a member of the Senate who is alleged to have breached a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 until the motion for removal is put to the vote.

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

(3) Despite section 25, the removal or suspension from office may be effected only if the motion for removal or suspension is supported by a majority comprising enough of the members of the Senate for their number to be at least 2/3 of the total number of offices (whether vacant or not) of member of the Senate.

[Clarifies DEST requirement in relation to vacancies.]"
(4) The motion for removal or suspension must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

(5) If the member to whom the motion for removal or suspension refers does not attend the meeting, a reasonable opportunity to reply to the motion is to be taken to have been given if notice of the meeting has been duly given.

(6) The Senate cannot remove or suspend from office a member of the Senate for breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 except in accordance with this section.

(7) A person must not vote on any question relating to the person’s removal or suspension from office by the Senate for the breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3, or be present while the matter is being considered at a meeting.

(8) This section applies only in relation to a breach of a duty mentioned in Schedule 1 clause 1(1), 2(1) or 3 that occurs after the Universities Legislation Amendment Act 2005 comes into operation.

(9) A person does not breach a duty mentioned in Schedule 1 clause 1(1)(a), (b) or (c) by doing or omitting to do anything in compliance with a direction given to the person in exercise of a power conferred by a written law.

(10) Subsection (9) does not extend to the manner in which a thing is done or omitted if it is done or omitted in a manner that is contrary to Schedule 1 clause 1(1)(a), (b) or (c) and the direction did not require that it be done in that manner.

""
56. **Section 12 amended**

Section 12(3) and (4) are repealed and the following subsections are inserted instead —

“(3) Subject to section 11, the Chancellor holds office for an initial term of up to 4 years, and from a day, that is determined by the Senate.  
[i.e. the Senate determines the term too.]

(4) A person who has held office as Chancellor for an initial term is eligible to hold office for a subsequent term or terms as long as any consecutive period of membership does not exceed 12 years.”

57. **Section 12A amended**

Section 12A(2) and (3) are repealed and the following subsections are inserted instead —

“(2) Subject to section 11, the Pro-Chancellor holds office for an initial term of up to 4 years, and from a day, that is determined by the Senate.  
[i.e. the Senate determines the term too.]

(3) A person who has held office as Pro-Chancellor for an initial term is eligible to hold office for a subsequent term or terms as long as —

(a) any consecutive period of membership does not exceed 12 years; and  
(b) the person continues to be a member of the Senate.”

58. **Section 16EA inserted**

After section 16E the following section is inserted —
16EA. Relief of Senate members from liability

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

(a) is, or may be, liable in respect of the negligence, default or breach;

(b) has acted honestly; and

(c) ought fairly to be excused for the negligence, default or breach having regard to all the circumstances of the case, including those connected with the person’s appointment,

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

[As discussed with Mr Pease on 12.4.05.]

59. Section 21 amended

Section 21(3) is amended by deleting “Subject to section 11, a” and inserting instead —

“A”.

60. Section 23 amended

Section 23 is amended by deleting “section 10A(3),” and inserting instead —

“section 9(4),”.

61. Section 24A inserted

After section 24 the following section is inserted —
24A. Disclosure of interests

Schedule 1 Division 2 has effect.

62. Schedule 1 inserted

After section 42 the following Schedule is inserted —

“Schedule 1 — Senate members

[Note change: as discussed with Mr Pease on 12.4.05.]

Division 1 — Duties

1. Duties

(1) Each member of the Senate has the following duties —

(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;

(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;

(c) the duty to at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member of the Senate;

(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 University;

(e) the duty to not make improper use of the position of member of the Senate to gain, directly or indirectly,
an advantage for any person or to cause detriment to
the University.

(2) Nothing in subclause (1) or section 11A or 24A affects —
   (a) any other duty a member of the Senate may have
       under any other law; or
   (b) the operation of any other law in relation to such a
duty.

[Note changes to cl. 1]

Division 2 — Disclosure of interests

2. Disclosure of interests

   (1) 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
       and extent of the interest at a meeting of the Senate.

   (2) A disclosure under subclause (1) is to be recorded in the
       minutes of the meeting.

3. Voting by interested members

   A member of the Senate who has a material personal interest
   in a matter that is being considered by the Senate —
   (a) must not vote whether at a meeting or otherwise —
       (i) on the matter; or
       (ii) on a proposed resolution under clause 4 in
            respect of the matter, whether relating to
            that member or a different member;
   and
   (b) must not be present while —
       (i) the matter; or
       (ii) a proposed resolution of the kind referred to
            in paragraph (a)(ii),
   is being considered at a meeting.
4. **Clause 3 may be declared inapplicable**

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

(a) specifies the member, the interest and the matter;

and

(b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

5. **Quorum where clause 3 applies**

Despite section 25, 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.

[Previous (2) omitted on Mr Pease’s request 12.4.05 to maintain independence of universities.]

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

(1) The Minister may, on the application of a member of the Senate, 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.

[Note change: on Mr Pease’s request 12.4.05 to maintain independence of universities.]

(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.