

NORTHERN TERRITORY OF AUSTRALIA

CHARLES DARWIN UNIVERSITY ACT

As in force at 27 October 2004

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 27 October 2004

CHARLES DARWIN UNIVERSITY ACT

An Act to establish the Charles Darwin University and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Charles Darwin University Act*.

2 Commencement

- (1) Section 51 comes into operation on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act come into operation on:
 - (a) 1 January 2004; or
 - (b) the date fixed by the Administrator by notice in the *Gazette*, whichever occurs first.

3 Definitions

In this Act, unless the contrary intention appears:

By-laws means the by-laws made under section 46.

Centralian College means the institution of that name established under section 41 of the *Education Act*.

Chancellor means the Chancellor of the University appointed under section 13.

Council means the Council of the University.

Deputy Chancellor means the Deputy Chancellor of the University appointed under section 14.

Institute of Advanced Studies means the Institute of Advanced Studies established under section 23.

Menzies School of Health Research means the School of that name established by the *Menzies School of Health Research Act*.

Northern Territory University means the Northern Territory University established by the *Northern Territory University Act*.

Rules means the rules made under section 47.

student of the University means a person of a class of persons prescribed by the By-Laws.

University means the Charles Darwin University.

Vice-Chancellor means the Vice-Chancellor of the University appointed under section 15.

Part 2 Charles Darwin University

4 Continuance and incorporation of University

- (1) Despite the repeal of the *Northern Territory University Act* by section 49, the University established by section 4 of that Act continues in existence under this Act as the Charles Darwin University.
- (2) The University:
 - (a) is a body corporate with perpetual succession;
 - (b) has a common seal;
 - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property; and
 - (d) is capable, in its corporate name, of suing and being sued.
- (3) A court, judge or persons acting judicially must take judicial notice of the common seal of the University affixed to a document and must presume that it was duly affixed.

5 Functions of University

The University has the following functions:

- (a) to undertake teaching activities that fulfil the requirements of an undergraduate and postgraduate university education and

training and further education by way of a course of instruction that is, or is preparatory to, a course of a kind relevant to a trade, technical or other vocational education;

- (b) to undertake research (taking advantage of the human and physical resources of the University) and, where appropriate, to consider commercial exploitation of research that is undertaken;
- (c) to undertake teaching activities to provide other education and training as determined by the Council;
- (d) to co-operate with other universities and with institutions of higher education, training and further education or research (whether within or outside of Australia);
- (e) to liaise with industry and professional organisations, training committees and the community;
- (f) to disseminate knowledge and advance skills and their practical application;
- (g) to provide consultative and research services and facilities;
- (h) to administer schemes of financial and other assistance for students of the University and persons studying or carrying out research at the University including, in the case of students, financial assistance in the form of loans;
- (i) to provide library and other educational facilities that may be used by the public on conditions as determined by the Council;
- (j) to carry out any other function that is conferred on it by or under this or any other Act.

6 Powers of University

- (1) The University has power to perform its functions and to exercise its powers including to do any thing that is necessary or convenient to be done in connection with or incidental to its functions and powers.
- (2) The University may establish institutes, faculties, schools, departments and organisations that it considers will best allow it to perform its functions.
- (3) Without limiting subsections (1) and (2), the University may do any of the following:
 - (a) enter into contracts;

- (b) create, develop, apply for, obtain and hold intellectual and industrial property and rights and enter into agreements or arrangements for their commercial exploitation on terms as to royalties, lump sum payments or otherwise that the Council thinks fit;
- (c) purchase, take on lease or otherwise acquire real or personal property and to sell, grant a lease or otherwise dispose of real or personal property;
- (d) erect buildings;
- (e) occupy, use and control land or buildings owned or held under lease and made available for the purposes of the University;
- (f) accept gifts, grants, bequests, devises and assignments made to the University (whether on trust or otherwise) and act as trustee of moneys or other property vested in the University on trust;
- (g) enter into arrangements with other universities or with institutions of higher, technical or further education (whether in or outside Australia) or with any of the States that administer education services to establish in the University courses of lectures or studies for degrees, diplomas, trade certificates or otherwise;
- (h) establish, manage and control halls of residence and other forms of student accommodation and to establish, manage and control other accommodation that the Council thinks fit.

7 Composition of University

The University consists of:

- (a) the members of the Council;
- (b) the graduates of the University and the Northern Territory University;
- (c) the holders of awards of the University and the Northern Territory University other than degrees;
- (d) the staff employed by the University;
- (e) the students of the University;
- (f) the holders of awards of Centralian College; and

- (g) other persons or classes of persons that the Council determines.

Part 3 Council

8 University affairs to be conducted by Council

- (1) The affairs of the University are to be conducted by the Council.
- (2) In particular, the Council is to:
 - (a) monitor the performance of the Vice-Chancellor;
 - (b) approve the mission and strategic direction of the University;
 - (c) approve the budget and business plan of the University;
 - (d) oversee the management of the University, including approving significant commercial activities;
 - (e) regularly review delegations under this Act;
 - (f) monitor systems of accountability implemented by the University;
 - (g) review management practices and performances of the University; and
 - (h) to oversee risk management across the University.
- (3) All acts and things done:
 - (a) by the Council; or
 - (b) in the name of or on behalf of the University with the express or implied authority of the Council,are taken to have been done by the University.

9 Composition of Council

- (1) The Council consists of:
 - (a) the Chancellor;
 - (b) the Vice-Chancellor;
 - (c) the Chairperson of the Academic Board;
 - (d) 8 persons appointed by the Administrator;

- (e) one person elected by and from the full-time higher education academic staff of the University;
 - (f) one person elected by and from the full-time TAFE academic staff of the University;
 - (g) one person elected by and from the undergraduate students of the University; and
 - (h) one person elected by and from the postgraduate students of the University.
- (2) The Nominations Committee:
- (a) must nominate persons considered suitable to be appointed members of the Council under subsection (1)(d); and
 - (b) must nominate at least one preferred candidate for each appointment that is to be made under subsection (1)(d).
- (3) The persons appointed under subsection (1)(d) are to be persons who represent between them a broad range of community interests (including persons with expertise in education and vocational training, research and technology).
- (4) Of the persons appointed under subsection (1)(d):
- (a) at least 2 are to be persons with financial expertise; and
 - (b) at least one is to be a person with commercial expertise.
- (5) A member of the Council must act solely in the interests of the University and not as a delegate or representative of a particular constituency when exercising a power or performing a function of the office.
- (6) If a body of persons required by this section to elect a member of the Council fails or refuses to elect the member by the date determined from time to time by the Council in respect of the particular election:
- (a) the Minister may on the advice of the Council appoint a person as the Minister thinks fit to be a member of the Council; and
 - (b) the person appointed is taken to have been elected a member by the body of persons.

10 Terms of office

Subject to this Act:

- (a) a person appointed to the Council under section 9(1)(d) holds office for 3 years from the date he or she is appointed;
- (b) a person elected to the Council under section 9(1)(e) or (f) holds office for 3 years from 1 January following the date he or she is elected; and
- (c) a person elected to the Council under section 9(1)(g) or (h) holds office for one year from 1 January following the date he or she is elected.

11 Vacation or termination of office

(1) A member vacates his or her office if:

- (a) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) the member is convicted in the Territory of an offence punishable by imprisonment for 12 months or more, or is convicted elsewhere than in the Territory of an offence that, if committed in the Territory, would be an offence punishable by imprisonment for 12 months or more;
- (c) the Administrator receives a report from the Chief Health Officer, based on advice from 2 medical practitioners, that as a result of his or her mental illness, as defined in the *Mental Health and Related Services Act*, he or she has become incapable of performing his or her duties as a member and is unlikely to be able to perform them for the remainder of his or her term of appointment;
- (d) the member is absent, except on leave granted by the Council, from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or by post;
- (e) the member resigns his or her office by writing signed by the member and delivered to the Secretary of the Council;
- (f) being the member elected under section 9(1)(e) – the member ceases to be a member of the full-time higher education academic staff of the University;

- (g) being the member elected under section 9(1)(f) – the member ceases to be a member of the full-time TAFE academic staff of the University;
 - (h) being the member elected under section 9(1)(g) – the member ceases to be an undergraduate student;
 - (i) being the member elected under section 9(1)(h) – the member ceases to be a postgraduate student; or
 - (j) the member knowingly contravenes or fails to comply with section 16.
- (2) The Council must terminate a member's appointment if it is satisfied that the member:
- (a) has not acted solely in the interests of the University;
 - (b) has not act honestly or in good faith in his or her capacity as a member;
 - (c) has not exercised appropriate care or diligence in his or her capacity as a member;
 - (d) has used his or her office to improperly gain an advantage (either for the member or another person); or
 - (e) is disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001.
- (3) In this section:

member means a member of the Council appointed or elected under section 9(1).

12 Casual vacancies

- (1) Subject to subsection (2), if a vacancy occurs in the office of a member of the Council elected under section 9(1) otherwise than by the expiry of the member's term of office:
- (a) the Council must appoint a person with the same qualification for election as the member in whose stead the member is appointed to fill the vacancy; and
 - (b) subject to this Part – the person appointed holds office as a member of the Council for the unexpired period of office of the member in whose stead the member is appointed.

- (2) In exercising its powers under subsection (1), the Council must take into account the results of the election at which the member vacating his or her office was elected.

13 Chancellor

- (1) The Council must appoint a person to be the Chancellor.
- (2) The Chancellor holds office for 3 years.
- (3) A member of the Council may be appointed the Chancellor but only if he or she is a member of the Council appointed under section 9(1)(d).
- (4) If the person appointed Chancellor is a member of the Council appointed under section 9(1)(d), the person is taken to have resigned his or her office as an appointed member and the Administrator must appoint another person to be a member of the Council under section 9(1)(d).
- (5) The Chancellor may resign his or her office by writing delivered to the Council.

14 Deputy Chancellor

- (1) The Council must appoint a person to be the Deputy Chancellor.
- (2) The person appointed the Deputy Chancellor must be a member of the Council appointed under section 9(1)(d).
- (3) The Deputy Chancellor may resign his or her office by writing delivered to the Council.
- (4) The Deputy Chancellor may act in the office of the Chancellor if the Chancellor is for any reason unable to exercise his or her powers or perform his or her functions.

15 Vice-Chancellor

- (1) The Council must appoint a Vice-Chancellor.
- (2) The Vice-Chancellor is to be appointed on terms and conditions determined by the Council.
- (3) The Vice-Chancellor is:
 - (a) the chief executive officer of the University; and
 - (b) responsible to the Council for the management of the University.

(4) The Vice-Chancellor has the powers and functions:

- (a) as prescribed by the By-laws; and
- (b) as determined by the Council.

16 Disclosure of interest

(1) A member of the Council who has a direct or indirect pecuniary interest in:

- (a) a matter being considered or about to be considered at a meeting of the Council; or
- (b) a thing being done or about to be done by the Council,

must, as soon as possible after the relevant facts come to his or her knowledge, disclose the nature of the interest at a meeting of the Council.

(2) Subsection (1) does not apply if the interest is held as a member of, and in common with the other members of, a corporation consisting of not less than 25 members and of which the member is not a director.

(3) A disclosure that a member:

- (a) is a member or an employee of a specified corporation or body;
- (b) is a partner or employee of a specified person; or
- (c) has some other specified interest relating to a specified corporation, body or person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to the company, body or person that may arise after the date of the disclosure.

(4) The Council must ensure that:

- (a) particulars of all disclosures made under this section are recorded in a book; and
- (b) the book is able to be inspected at all reasonable times by a person after paying the fee, if any, determined by the Council.

- (5) A member of the Council who has, or is taken to have disclosed, the nature of an interest must not:
 - (a) be present during any deliberation of the Council, or take part in a decision of the Council, in relation to a matter to which the disclosure relates; or
 - (b) perform a function under this Act in relation to a matter to which the disclosure relates.
- (6) Subsection (5) does not apply if the Council (in the absence of the member) determines otherwise.
- (7) In this section:

Council includes a committee of the Council.

17 Meetings of Council

- (1) The Chancellor must call as many meetings of the Council as are necessary for it to perform its functions and exercise its powers.
- (2) However, the interval between meetings cannot exceed 4 months.
- (3) The Chancellor must call a meeting of the Council if requested to do so by 8 members of the Council.
- (4) At a meeting of the Council, 8 members of the Council constitute a quorum.
- (5) At a meeting of the Council:
 - (a) questions are to be determined by a majority of the votes of the members present and voting; and
 - (b) in the event of an equality of votes – the matter is to be deferred to the next meeting of the Council and, in the event of an equality of votes at that meeting, the matter is to be taken to have been defeated.
- (6) Except as provided by this Act and the By-laws, the Council may determine the procedure to be followed at or in connection with its meetings.
- (7) The Council must ensure that there are formal induction and professional processes available to a member so that he or she is aware of his or her duties as a member.

18 Presiding at meetings

- (1) Subject to subsection (2), the Chancellor or, in the Chancellor's absence, the Deputy Chancellor must preside at meetings of the Council at which he or she is present.
- (2) If both the Chancellor and Deputy Chancellor are absent from a meeting of the Council, the members present must elect an acting Chancellor and the person may exercise the powers and perform the functions of the Chancellor for the meeting.

19 Committees

- (1) The Council may establish committees.
- (2) The Council must establish a Nominations Committee.
- (3) A person may be appointed a member of a committee whether or not he or she is a member of the Council.

Part 4 Academic Board, Alumni and student association**20 Academic Board**

- (1) The Academic Board of the University is established.
- (2) The membership of the Academic Board is as prescribed by the By-laws.
- (3) The By-laws are to provide for the method of appointing the Chairperson and Deputy Chairperson of the Academic Board.
- (4) The Academic Board:
 - (a) may advise the Council or the Vice-Chancellor on any matter relating to the University and, in particular, make recommendations with respect to instruction, studies, examinations and assessments, research and awards relevant to those programs deemed to be awards for funding purposes; and
 - (b) must report on any matter on which it is required to report by the Council or the Vice-Chancellor.
- (5) In addition to subsection (4), the Academic Board has the powers and duties that are conferred or imposed on it by or under this Act.

- (6) The proceedings of the Academic Board are to be conducted in the manner it determines.

21 Alumni

- (1) The Alumni of the University is established.
- (2) The membership of the Alumni is as prescribed by the By-laws.

22 Student association

- (1) The students of the University in accordance with the By-laws and the Rules may:
 - (a) establish a student association of the University; and
 - (b) adopt a constitution by which the student association is to be governed.
- (2) The objects of the student association are to be defined in its constitution.
- (3) A constitution adopted under subsection (1) and any amendment to it is of no force or effect until approved by the Council.

Part 5 Institute of Advanced studies and research schools

23 Institute of Advanced Studies

- (1) The Council must establish an Institute of Advanced Studies.
- (2) The Council must establish an advisory board for the Institute of Advanced Studies.
- (3) The members of the advisory board for the Institute of Advanced Studies are to be appointed by the Council.

24 Research schools

- (1) The Institute of Advanced Studies may establish research schools.
- (2) The Council must in respect of each research school established under subsection (1):
 - (a) appoint a person to be the Director of the research school;
 - (b) establish an advisory board for the research school; and

- (c) approve the business plan and budget of the research school for each financial year.
- (3) The members of an advisory board are to be appointed by the Council.
- (4) An advisory board has the functions determined by the Council.

25 Menzies School of Health Research

- (1) The Menzies School of Health Research is a research school.
- (2) The Director of the Menzies School of Health Research is a member of the advisory board for the Institute of Advanced Studies.

Part 6 Degrees and other awards

26 Degrees and awards of University

- (1) The Council may:
 - (a) confer degrees of the University; and
 - (b) grant diplomas, certificates or other awards of the University, in relation to the passing of examinations of the University or education and training provided by the University.
- (2) For the purpose of enabling students to obtain degrees and other awards of the University, the Council must promote course articulation and credit transfer between training and further education and higher education.
- (3) The Council may grant honorary degrees and other distinctions.

27 Degrees and awards of other bodies

The Council may cause instruction to be given to students for the purpose of completing the requirements for a degree or other award of any university or other institution with which the Council has made an agreement.

Part 7 Staff and consultants

28 Appointment of staff

- (1) Subject to this Act and the By-laws, the Vice-Chancellor may appoint academic and other staff for the purposes of the University.

- (2) Members of the staff of the University are to be employed on terms and conditions approved by the Council.

29 Consultants may be engaged

The Council may:

- (a) engage consultants to the University; and
(b) make arrangements to be provided with advice.

Part 8 Property, finance, audit and annual report

30 Financial year

Subject to the approval of the Treasurer, the Council may determine a date on which the financial year of the University ends.

31 Fees and charges

- (1) The Council may determine the fees and charges to be paid to the University:
- (a) for courses of study or instruction of the University;
(b) for admission to examinations conducted by the University;
and
(c) for other facilities or privileges of the University.
- (2) A student granted a scholarship or bursary by the University is exempt from paying fees and charges to the extent of the exemption applicable under the scholarship or bursary.
- (3) The Council may exempt a student from paying the whole or a part of a fee or charge if it considers that paying the fee or charge, or the part, would cause substantial hardship to the student.
- (4) The Council may defer the date at which a fee or charge is payable by a student if it considers that paying the fee or charge by the date would cause substantial hardship to the student.

32 University accounts

- (1) Subject to this Part, the Council may open and maintain accounts with any ADI or with the Territory Insurance Office.
- (2) All moneys received by the University must be paid to the credit of the accounts referred to in subsection (1).

- (3) Subject to the terms of a trust, money in an account referred to in subsection (1) must be applied by or with the authority of the Council only for the purposes of the University.

33 Proper accounts to be kept

The Council must:

- (a) cause proper accounts and records of the transactions and affairs of the University to be kept;
- (b) do all things necessary to ensure that all payments out of the moneys of the University are correctly made and properly authorised;
- (c) do all things necessary to ensure that adequate control is maintained over the property owned or in the custody of the University; and
- (d) do all things necessary to ensure that adequate control is maintained over liabilities incurred by the University.

34 Gifts etc. and trust funds

- (1) In exercising its powers to acquire, hold, deal with or dispose of real or personal property, the University may agree to and carry out the conditions of a gift, grant, bequest, devise, purchase, lease or other means by which it acquires or holds property.
- (2) The University may create and administer trust funds:
 - (a) for the purposes of subsection (1); or
 - (b) for any other purpose.

35 Investment

- (1) The Council may establish investment common funds to collectively invest the trust or other moneys of or in the custody of the University.
- (2) The Council may, without liability for breach of trust, bring into or withdraw from an investment common fund the whole or any part of the trust or other moneys of or in the custody of the University.
- (3) Subject to subsections (4) and (5), the Council must periodically distribute the income of an investment common fund among the funds participating in the common fund (having regard to the extent of the participation of each fund in the common fund during the relevant accounting period).

- (4) If moneys received by the Council to be expended for a stated purpose have been brought into an investment account but cannot, or will not immediately be expended for that purpose, the Council may pay into the general funds of the University the whole or a part of the income of the investment common fund that is attributed to those moneys and which are not required for the stated purpose.
- (5) The Council may:
 - (a) add a portion of the income of an investment account to the capital of the investment common fund; or
 - (b) use a portion of the income of an investment account to establish or augment a fund as a provision against any capital depreciation or reduction of income.
- (6) Moneys of the University (whether forming part of a common fund or not), including moneys held on trust or subject to a condition, must only be invested in a class of investment approved by the Treasurer.
- (7) The powers conferred by this section or the By-laws relating to investment of property, must not be exercised by the Council in relation to a trust fund or other moneys if:
 - (a) the investment creating the trust expressly prohibits the Council from doing so; or
 - (b) the exercise of power would constitute a breach of a condition under which the fund or moneys was or were acquired.

36 Variation of terms of trust or gift

- (1) If, in respect of prescribed property:
 - (a) the purpose or all or any of the purposes has or have been effected;
 - (b) the purpose or all or any of the purposes has or have ceased to exist;
 - (c) the purpose or all or any of the purposes has or have been adequately provided for by other means;
 - (d) the purpose or all or any of the purposes is or are uncertain or cannot be identified or is or are not sufficiently defined;
 - (e) it becomes impossible or impracticable or inexpedient to carry out the purpose or all or any of the purposes; or

- (f) the property or income derived from the property proves inadequate to carry out the purpose or all or any of the purposes,

the Council may cause a scheme to be prepared by which prescribed property or any part or residue of the property is to be held on terms requiring the property or income from the property to be applied for the purpose or purposes designated in the scheme.

- (2) The Council must submit a scheme prepared under subsection (1) to the Administrator.
- (3) The Administrator may, on receiving the scheme:
- (a) by notice in the *Gazette*:
- (i) approve it; or
- (ii) approve it with modifications; or
- (b) by notice in writing to the Council – refuse to approve the scheme.
- (4) If an approved scheme exists in relation to property or a part or residue of property held by the University, the property, part or residue must, in accordance with the approved scheme:
- (a) be diverted from the purpose or purposes for which it was held; and
- (b) is to be held for the purpose or purposes designated in the approved scheme.
- (5) In selecting a purpose for an approved scheme, the Council must have a preference for a purpose that, in its opinion, is as nearly similar to the purpose or purposes for which the property concerned is, for the time being, held by the University as is consistent with useful and convenient achievement but the scheme or amendment is not invalidated or otherwise prejudiced by reason that another purpose may have more properly been selected by the Council in accordance with this subsection.
- (6) On its publication in the *Gazette*, judicial notice is to be taken of an approved scheme.
- (7) The powers conferred by this section are in addition to any other power or right exercisable in law in relation to property held by the University on trust.

(8) In this section:

approved scheme means a scheme approved under subsection (3).

prescribed property means property held by the University on terms requiring the property or income from the property to be applied for a purpose or purposes.

37 Financial accommodation

(1) The Council may obtain an advance by way of loan:

- (a) from the Treasurer;
- (b) on overdraft from an ADI; or
- (c) from any other person.

(2) An advance under subsection (1)(c) may be on security and at a rate of interest and on terms and conditions that the Council thinks fit.

38 Budget and financial information

(1) The Council must:

- (a) in each financial year – adopt for the next financial year a budget for all funds of the University (other than those to which subsection (3) relates);
- (b) approve all amendments to the budget; and
- (c) control the expenditure of the University so that it conforms as nearly as practicable to the budget adopted under paragraph (a).

(2) As soon as practicable after adopting or amending a budget under subsection (1), the Council must forward a copy of it to the Treasurer.

(3) The Council must each year:

- (a) review:
 - (i) the funds available to the University by way of bequest, donation or special grant; and
 - (ii) the expenditure of those funds; and

- (b) subject to the terms of a trust – approve the proposed disposition of those funds.
- (4) The Treasurer may require the Vice-Chancellor to provide information that, in the Treasurer's opinion, is necessary to enable him or her to accurately assess the financial affairs of the University, including details of:
 - (a) financial investments in corporations, trusts and joint ventures;
 - (b) contingent liabilities; and
 - (c) guarantees.
- (5) The Vice-Chancellor must provide the information required by the Treasurer under subsection (4).

39 Annual reports and audit

- (1) The Council must:
 - (a) within 6 months after the end of the financial year; or
 - (b) within any further period that the Minister allows,prepare a report on the operations of the University during the financial year and forward it to the Minister.
- (2) A report under subsection (1) must include any financial statement prepared under subsection (3).
- (3) The Vice-Chancellor must:
 - (a) within 3 months after the end of the financial year; or
 - (b) within any further period that the Treasurer allows,prepare a financial statement in respect of the operations of the University or functions of the University specified by the Treasurer in writing.
- (4) A financial statement under subsection (3) must be prepared in the form that the Treasurer directs.
- (5) The Vice-Chancellor must forward the financial statement to the Auditor-General.
- (6) The Auditor-General must:
 - (a) audit the statement forwarded under subsection (5); and

- (b) within 3 months after receiving the statement or any further period that the Administrator allows:
 - (i) report on the statement to the Minister; and
 - (ii) forward a copy of the report to the Vice-Chancellor.
- (7) The Minister must table in the Legislative Assembly:
 - (a) the report under subsection (1); and
 - (b) the report of the Auditor-General under subsection (6),within 6 sitting days of the Assembly after receiving the report of the Auditor-General.

Part 9 Miscellaneous

40 Trading corporations etc.

The Council may, with the approval of the Treasurer:

- (a) establish; or
- (b) participate in establishing,

trading, research or other corporations for the purpose of promoting or assisting the University in connection with its functions.

41 Controlled entities

- (1) The Council must ensure that a controlled entity of the University is properly managed by:
 - (a) ensuring that members of the board of the entity possess appropriate skills, knowledge and experience;
 - (b) ensuring that a sufficient number of members of the board of the entity are independent;
 - (c) ensuring that the board of the entity adopts and implements a statement of governance principles acceptable to the Council;
 - (d) ensuring that the board of the entity documents a clear corporate and business strategy that reports and updates annually the entity's long term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones;

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- (e) requiring the board of the entity to prepare quarterly reports against its business plan; and
 - (f) requiring the financial statements of the entity to be audited by the Auditor-General.
- (2) In subsection (1):

controlled entity has the same meaning as in Australian Accounting Standard 31 (Financial Reporting by Governments) issued by the Australian Accounting Standards Board, as in force from time to time.

42 Delegation

- (1) The Council may delegate any of its powers and functions under this Act other than:
 - (a) a power or function referred to in section 8(2);
 - (b) this power of delegation; or
 - (c) the power to make By-laws or Rules.
- (2) The Vice-Chancellor, subject to the directions of the Council, may delegate any of his or her powers and functions under this Act other than this power of delegation.
- (3) A power or function delegated under this section, when exercised or performed by the delegate, is taken to have been exercised or performed by the Council or Vice-Chancellor, as the case may be.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Council or Vice-Chancellor.
- (5) If a power or function is delegated under this section by the Council to a member of the staff of the University, the power or function is also delegated to the Vice-Chancellor.
- (6) If a power or function is delegated under this section by the Council to a committee of the Council and the composition of the committee changes, the power or function is delegated to the committee despite its change of composition (unless expressly revoked or varied by the Council).
- (7) A delegation under this section must be in writing.

43 Terms of contract and execution of documents

- (1) A deed, instrument, contract or agreement relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the University in writing under its common seal.
- (2) An instrument, contract or agreement relating to any property or matter that, if made by or between individuals would be required to be in writing and signed by the parties, may be made on behalf of the University in writing by a person acting under the authority, express or implied, of the Council.
- (3) A contract relating to any property or matter that, if made between individuals, would by law be valid although made by parol only (and not reduced to writing) may be made on behalf of the University by a person acting under the authority, express or implied, of the Council.
- (4) A contract entered into or an instrument, contract or agreement signed in relation to any property or obligation of the University is taken to have been entered into or signed with the express authority of the Council if it is entered into or signed in accordance with a resolution of the Council that is in force.

44 Protection from liability

- (1) This section applies to a person who is or has been:
 - (a) a member of the University;
 - (b) a member of the Council; or
 - (c) a member of a committee.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the University or the Council in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (4) Subsections (2) and (3) do not affect any liability the Territory or the University would, apart from those subsections, have for the act or omission.

45 Validity of proceedings

- (1) Proceedings of the Council or a committee of the Council cannot be invalidated by reason only of:
 - (a) a defect in the appointment or election of, or a disqualification of, a member of the Council or the committee;
 - (b) a defect in convening or conducting a meeting of the Council or the committee;
 - (c) a vacancy in the membership of the Council or the committee;
 - (d) the fact that a person purporting to be a member of the Council or the committee was not a member; or
 - (e) a contravention of or non-compliance with section 16 by a member of the Council or the committee.
- (2) An act done by the Vice-Chancellor or a delegate of the Council or the Vice-Chancellor cannot be invalidated by reason only of a defect in the appointment of the person to the office.

46 By-laws

- (1) The Council may make by-laws, not inconsistent with this Act, prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The By-laws may provide for:
 - (a) the use and custody of the common seal of the University;
 - (b) the method of electing members of the Council under section 9(1), including procedures relating to nominating, enrolling, voting, counting of votes and declaring the polls;
 - (c) the manner and time of convening, holding and adjourning the meetings of the Council, voting at meetings, the powers and duties of the Chancellor or other person presiding at meetings, and the conduct and recording of the business at meetings;
 - (d) the appointment of committees of the Council, and the quorum, powers and duties of those committees;
 - (e) the admission of students to the University;

- (f) the promotion and extension of University teaching and research;
- (g) the granting of degrees, diplomas, certificates and honours by the University;
- (h) the granting of fellowships, scholarships, exhibitions, bursaries and prizes by the University;
- (i) the admitting of students of other universities or educational establishments to a corresponding status or of graduates of other universities to a corresponding degree or diploma of the University without examination;
- (j) the establishing, managing and controlling of libraries and museums in connection with the University;
- (k) the establishing, managing and controlling of halls of residence established, and other accommodation provided, by the University;
- (l) the affiliation, association or connection with the University of an educational or research establishment, wherever situated, to which the governing body of the establishment consents;
- (m) the controlling and investing of property of the University, including property held on trust or subject to a condition;
- (n) the protecting of property of or under the control of the University from trespass, damage or misuse;
- (o) the regulation and control of access to, and the use of, land and buildings of or under the control of the University and the conduct of persons and the presence and use of vehicles thereon;
- (p) the terms and conditions of appointment of academic and other staff;
- (q) the recognition of the status of graduate for the purposes of this Act;
- (r) student discipline;
- (s) the making of rules; and
- (t) the method for collecting fees and charges determined by the Council under section 31 and the recovery of costs and charges associated with collecting those fees and charges.

- (3) A by-law may:
- (a) in the case of an offence of:
 - (i) bringing a vehicle onto or parking or standing a vehicle on a site in breach of a by-law;
 - (ii) driving a vehicle on a part of a site in breach of a by-law;
 - (iii) driving a vehicle on a part of a site at a speed in excess of a speed that, in relation to that part, is prescribed, determined by a method prescribed or fixed by a person authorised by a by-law so to do in respect of the site or that part;
 - (iv) driving a vehicle on a part of a site contrary to a direction, whether given by a person authorised by a by-law so to do or by a traffic control device on the site; or
 - (v) doing on a site with or in respect of a vehicle any other act that is prescribed,

provide that the person who was in charge of the vehicle at the material time or the owner of the vehicle (whether or not the owner was in charge of the vehicle at the material time) is liable to be punished for the offence;
 - (b) define who is the owner of a vehicle for the purposes of the By-laws;
 - (c) provide for the removing or disposing of a vehicle:
 - (i) parked or left standing on a site in a position that obstructs, interferes with or causes danger to other vehicles on the site or to users of the site; or
 - (ii) apparently abandoned on a site; and
 - (d) prescribe the proof that is necessary or sufficient to establish a matter relevant to an offence created by the By-laws.
- (4) A by-law referred to in subsection (3)(a) cannot be construed so that the owner of a vehicle and the person in charge of it at the time an offence was committed with or in respect of the vehicle are both liable for the one offence.
- (5) The By-laws are not regulations for the purposes of section 57 of the *Interpretation Act*.

- (6) In subsection (3):

site means land or a building the property of or under the control of the University.

47 Rules

- (1) The Council may make rules (not inconsistent with this Act or the By-laws) for carrying into effect any of the provisions of this Act or the By-laws.
- (2) Rules must be signed by a person authorised by the Council to sign them.
- (3) Rules:
- (a) must be published in the manner provided for in the By-laws; and
 - (b) take effect from the date of publication or, if a later date is provided for in the Rules, from the later date.
- (4) It is sufficient compliance with the requirements of subsection (3) if notice of the making of the Rules and the place where copies of them may be obtained is published on a notice board nominated in the By-laws as the main notice board for the University in each campus.
- (5) Despite section 63(11) of the *Interpretation Act*, section 63 of that Act does not apply in relation to the Rules.

48 Penalties under by-laws and rules

- (1) A by-law or rule may impose, or empower the Council or an officer of the University or a body established in accordance with the By-laws to impose, a penalty not exceeding:
- (a) in the case of a by-law – 10 penalty units; and
 - (b) in the case of a rule – one penalty unit,
- for a contravention of or failure to comply with a by-law or rule.
- (2) A penalty imposed under a power conferred by a by-law or rule is a debt due and payable by the person on whom it is imposed to the University.
- (3) In proceedings to recover a penalty imposed under a by-law or rule, a certificate signed by an officer of the University and specifying the person or body by whom it was imposed, the date on which it was

imposed and the amount of the penalty is prima facie evidence of the matters specified.

Part 10 Repeals, savings and transitional provisions

49 Repeal

The Acts specified in Schedule 1 are repealed.

50 Removal of college status of Centralian College

Centralian College:

- (a) ceases to be a college for the purposes of the *Education Act*, and
- (b) ceases to be a body corporate.

51 Establishing first Council

- (1) As soon as practicable after the commencement of this section:
 - (a) the members of the Council referred to in section 9(1)(d) are to be appointed; and
 - (b) the members of the Council referred to in section 9(1)(e), (f), (g) and (h) are to be elected.
- (2) For the purposes of this section, section 9 is taken to have come into operation on the commencement of this section.
- (3) For the purposes of this section, the Nominations Committee consists of the Chancellor, Vice-Chancellor and Deputy Chancellor of the Northern Territory University.
- (4) The Nominations Committee must nominate persons to be appointed under section 9(1)(d) in accordance with section 9.
- (5) As soon as practicable after the commencement of this section, the Vice-Chancellor of the Northern Territory University is to conduct elections for the members referred to in section 9(1)(e), (f), (g) and (h) and a reference in those paragraphs to the University is to be read as a reference to the Northern Territory University.
- (6) The elections are to be conducted in accordance with the *Northern Territory University (Election of Members of Council) By-laws* (with the necessary changes) and a reference in those By-laws:
 - (a) to an election is to be read as a reference to an election conducted under this section; and

- (b) to the Registrar is to be read as a reference to the Vice-Chancellor.
- (7) A person appointed to the Council under section 9(1)(d) in accordance with this section holds office for the period, not exceeding 3 years, as is specified in his or her appointment.
- (8) A person elected to the Council under section 9(1)(e), (f), (g) and (h) in accordance with this section holds office for one year from the date he or she is elected.
- (9) As soon as practicable after the members of the Council are appointed and elected under this section, the Council must elect the Chancellor and Deputy Chancellor.
- (10) For the purposes of subsection (9), sections 13 and 14 are taken to have come into operation on the commencement of this section.
- (11) The Council referred to in subsection (9) is to consist of the members appointed and elected under this section and the Vice-Chancellor and the Chair of the Academic Board of the Northern Territory University.
- (12) The Chancellor elected under this section holds office for 3 years commencing on the commencement of this Act.

52 Savings and transitional provisions

- (1) The savings and transitional provisions in Schedules 2 and 3 have effect.
- (2) The Administrator may by regulations make provisions (not inconsistent with this Act) that the Administrator considers necessary or desirable to be made:
 - (a) for the purpose of giving effect to section 50;
 - (b) for the purpose of giving effect to section 51; or
 - (c) with respect to any matter or thing existing or in force immediately before the commencement of this Act, being provisions consequential on the repeals effected by section 49.
- (3) For the purposes of subsection (2)(b), subsection (2) is taken to have commenced on the commencement of section 51.

Schedule 1

Section 49

Northern Territory University Act 1988

No. 49, 1988

Northern Territory University Amendment Act 1994

No. 79, 1994

Schedule 2 Savings and transitional provisions – Northern Territory University

section 52(1)

- (1) On the commencement of this Act, the person who immediately before that commencement was the Vice-Chancellor of the Northern Territory University is the Vice-Chancellor as if appointed under section 15 of this Act on the same terms and conditions as determined for the office under the *Northern Territory University Act*.
- (2) On the commencement of this Act:
 - (a) the Academic Board of the University that was established under section 24 of the *Northern Territory University Act* is the Academic Board as if established under section 20 of this Act; and
 - (b) the persons who immediately before that commencement were the Chair and Deputy Chair of the Academic Board of the University established under section 24 of the *Northern Territory University Act* are the Chairperson and Deputy Chairperson of the Academic Board as if appointed to those offices under section 20 of this Act.
- (3) On the commencement of this Act:
 - (a) the student association that was established under section 26 of *Northern Territory University Act* is taken to have been established under section 22 of this Act; and
 - (b) the constitution in force under section 26 of *Northern Territory University Act* immediately before that commencement is to taken be the constitution in force under section 22 of this Act.
- (4) On the commencement of this Act, persons who immediately before that commencement were the staff of the Northern Territory University appointed under section 29 of the *Northern Territory University Act* are the staff of the University as if appointed under section 28 of this Act on the same terms and conditions as determined under section 29 of the *Northern Territory University Act*.
- (5) On the commencement of this Act, by-laws and rules that were in force under *Northern Territory University Act* immediately before that commencement continue in force as if they were by-laws and rules made under this Act.

- (6) By-laws and rules referred to in subclause (5) may be amended or repealed under this Act.
- (7) By-laws and rules referred to in subclause (5) are to be read as if a reference in them:
 - (a) to the University or the Council were a reference to the University or Council within the meaning of this Act;
 - (b) to a section of the Act were a reference to the equivalent section (if any) of this Act; and
 - (c) to an office, designation or position were a reference to the equivalent office, designation or position (if any) under this Act.
- (8) If an office, designation or position in by-laws and rules referred to in subclause (5) no longer exists under this Act, the reference is to be read as a reference to the office, designation or position determined by the Vice-Chancellor.

Schedule 3 Savings and transitional provisions – Centralian College

section 52(1)

1 Staff of Centralian College

- (1) A person who immediately before the commencement of this Act was an employee of the Department performing duties for Centralian College is on that commencement a member of the staff of the University.
- (2) A person to whom subclause (1) applies:
 - (a) is entitled to be paid salary or wages, allowances and other benefits at rates equal to, and on the same terms and conditions as, those that were payable to him or her immediately before the commencement of this Act until his or her salary, wages, allowances or other benefits is or are varied or altered by an award of a competent tribunal or an industrial agreement or by any other lawful means or, subject to an award or an industrial agreement or other lawful means, by a decision of the Council;
 - (b) continues to be employed on the same conditions as the conditions of his or her employment under the *Public Sector Employment and Management Act* immediately before the commencement of this Act (including any period of probation or any approval given under section 61 of that Act to engage in paid employment outside his or her employment) until varied or altered by an award of a competent tribunal or an industrial agreement or by any other lawful means or, subject to an award or an industrial agreement or other lawful means, by a decision of the Council; and
 - (c) retains all his or her existing and accruing rights arising from his or her employment under the *Public Sector Employment and Management Act* as if he or she continued to be employed under that Act, and for that purpose the person's service under that Act is to be taken to be service with the University.
- (3) If the contract of employment of a person to whom subclause (1) applies is expressed to expire on a specified or ascertainable date that occurs after the commencement of this Act, the person is taken to be a member of the staff of the University under a contract of employment that expires on the same date.

(4) All:

- (a) rights and proceedings under Part 7, 8 or 9 of the *Public Sector Employment and Management Act* of or in respect of a person who under subclause (1) is a member of the staff of the University that exist and are pending or have commenced immediately before the commencement of this Act;
- (b) obligations, duties, liabilities or remedies under the *Public Sector Employment or Management Act* in respect of those rights and proceedings; and
- (c) orders, directions or decisions made in respect of those rights or proceedings under the *Public Sector Employment and Management Act*,

continue unaffected and may be dealt with under the *Public Sector Employment and Management Act* but this Act and the By-laws apply in relation to those orders, directions or decisions with the necessary changes.

(5) Any suspension, instruction, direction or other action that:

- (a) was taken or given under the *Public Sector Employment and Management Act* in relation to a person who under subclause (1) is a member of the staff of the University; and
- (b) is in force immediately before the commencement of this Act,

continues to have effect as if made under this Act and this Act and the By-laws apply in relation to the suspension, instruction, direction or other action with the necessary changes.

(6) A person to whom subclause (1) applies is not entitled to claim benefits under both this Act and the *Public Sector Employment and Management Act* in respect of the same period of service.

(7) A person to whom subclause (1) applies may apply in writing to the Chief Executive Officer to be re-appointed an employee at any time before 1 January 2005.

(8) A person who applies under subclause (7):

- (a) is to be provided with assistance by the Department (in accordance with redeployment procedures applying to persons to whom this subclause applies) to find suitable employment in the Public Sector;
- (b) is to actively seek to find suitable employment in the Public Sector; and

- (c) is not to refuse to accept employment in the Public Sector that the Chief Executive Officer considers the person is capable of performing and is competent and qualified to perform.
- (9) Subclause (8) ceases to apply on 30 June 2005.
- (10) If a person who applies under subclause (7) is re-appointed an employee on or before 30 June 2005:
 - (a) the person's employment as a member of the staff of the University is, for the purposes of the *Public Sector Employment and Management Act*, to be taken to be employment under that Act; and
 - (b) for the purposes of the *Public Sector Employment and Management Act* – subclause (1) is taken not to have applied to the person.
- (11) In this clause:

Chief Executive Officer means the Chief Executive Officer within the meaning of the *Public Sector Employment and Management Act* of the Department.

Department means the Department of Employment, Education and Training.

employee means an employee within the meaning of the *Public Sector Employment and Management Act*.

Public Sector means the Public Sector within the meaning of the *Public Sector Employment and Management Act*.

2 **Property etc. of Centralian College**

On the commencement of this Act, all property, rights and liabilities of Centralian College become the property, rights and liabilities of the University.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = *Gazette*
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2 LIST OF LEGISLATION

Charles Darwin University Act 2003 (Act No. 45, 2003)

Assent date	29 August 2003
Commenced	s 51: 29 August 2003; rem: 5 November 2003 (<i>Gaz</i> G44, 5 November 2003, p 3)

Statute Law Revision Act (No. 2) 2004 (Act 54, 2004)

Assent date	15 September 2004
Commenced	27 October 2004 (<i>Gaz</i> G43, 27 October 2004, p 3)

3 LIST OF AMENDMENTS

s 52 amd No. 54, 2004, s 7