



Ready reckoner

University Governing Acts

Summary of functions, objects, purposes and powers relating to the commercial exploitation of university resources and facilities

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* Please note this table is intended to be a ready-reckoner of the applicable legislation for public universities in each State and Territory of Australia relating to this topic. It is expressed in general terms and should not be substituted for a careful reading of the governing and associated legislation applicable to any particular university.



Functions, objectives or purposes related to commercial exploitation of university resources

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<p>University of Canberra</p> <p>The university's functions include to commercially exploit or develop, for the university's benefit, any property of the university including any facility, resource, real property or other right or interest.</p> <p>Australian National University</p> <p>-</p>	<p>Each university's functions include commercial functions comprising the commercial exploitation or development, for the university's benefit, of any facility, resource or property of the university, whether alone or with others.</p>	<p>The university's functions include, where appropriate, to consider commercial exploitation of research that is undertaken.</p>	<p>Each university's functions include exploiting commercially, for the university's benefit, a facility or resource of the university, whether alone or with someone else.</p>	-	<p>The university's functions include to foster or promote the commercialisation of intellectual property.</p>	<p>Each university's objects include to utilise or exploit its expertise and resources, whether commercially or otherwise.</p>	<p>Curtin University of Technology, Edith Cowan University and Murdoch University</p> <p>Each university's functions include</p> <p>(a) to commercially develop or commercially use, for the University's benefit, any facility, resource or property (real or personal) of the University or in which the</p> <p>University has a right or interest, whether alone or</p> <p>with others;</p> <p>(b) to generate revenue for the purpose of funding the carrying out of its functions; and</p> <p>(c) to enter into 'business arrangements'.</p> <p>UWA</p> <p>-</p> <p>Notre Dame</p> <p>-</p>

Relevant Commercial Powers

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<p>The University has the power to do all things necessary or convenient in connection with the exercise of its functions.</p>	<p>Each university may:</p> <ul style="list-style-type: none"> exercise commercial functions comprising of commercial exploitation or development of any facility resource or property which the University has a right or interest in, for their benefits; and generate revenue to fund its objects and functions. <p>*Exception - Australian Catholic University Act does not provide for any commercial powers</p> <p>**Western Sydney University Act requires an exercise of commercial functions to have particular regard to the need to contribute to the development of Greater Western Sydney</p>	<p>The University has the power to perform its functions and to exercise powers including anything necessary or convenient to be done in connection with or incidental to its functions and powers.</p>	<p>Each university has all the powers of an individual, and may, for example:</p> <ul style="list-style-type: none"> enter into contracts; appoint agents and attorneys; engage consultants; and do anything necessary or convenient to be done for, or in connection with, its functions. 	<p>Each university is a body corporate invested with full juristic capacity and unfettered discretion (subject to the laws of South Australia) to conduct its affairs in the manner it thinks fit.</p>	<p>The University has to do all things necessary or convenient to be done for or in connection with the performance of its functions.</p>	<p>Each university may do and suffer all acts and things that a body corporate may by law do or suffer, including:</p> <ul style="list-style-type: none"> entering into contracts; being a member of a company, association, trust or partnership (subject to guidelines); forming or participating in the formation of a company, trust or partnership (subject to guidelines); entering into a joint venture or joint undertaking; and doing anything else necessary or convenient to be done for or in connection with its objects, powers and functions. 	<p>Curtin University of Technology, Edith Cowan University and Murdoch University</p> <p>Each university has all the powers, rights and privileges that are reasonably necessary to:</p> <ul style="list-style-type: none"> commercially develop or use any facility, resource or property (real or personal) of the University; generate revenue to carry out its functions; and enter into 'business arrangements' (not defined). <p>*Neither the University of Notre Dame Australia Act nor the University of Western Australia Act contain express commercial powers.</p>

Powers re Commercialisation of Property

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<p>The university has the power to buy, take on lease or otherwise acquire real and personal property and to sell, grant leases of or dispose of such property.</p> <p>The university may develop commercially any discovery, invention or property.</p>	<p>Each university has control and management of all property vested in or acquired by the university and may acquire or dispose of any property of the university.</p> <p>Each university may alienate, mortgage charge or demise any land of the University</p> <p>Each university may lease out land without Minister approval if the term of the lease is less than 21 years.</p>	<p>The university has the power to purchase, take on lease or otherwise acquire real or personal property and to sell, grant a lease or dispose of real or personal property.</p>	<p>Each university has a general power to acquire, hold, dispose of and deal with property.</p> <p>Disposal</p> <p>State land is held and may be disposed of under the <i>Land Act 1994</i> (Qld).</p> <p>Leasing</p> <p>Each university may grant an interest in State land only by lease.</p> <p>Despite the <i>Land Act 1994</i> (Qld), a trustee lease or sublease for land under the <i>Land Act 1994</i> (Qld) that is subject to an operational reserve or operational deed of grant in trust may be for up to 100 years.*</p> <p>*Exception – A lease granted by the University of the Sunshine Coast must not be for more than 25 years.</p>	-	<p>The university has power the power to acquire, hold and dispose of real and personal property.</p>	<p>Each university has control and management of all property vested in or acquired by the university and may acquire or dispose of any property of the university.</p> <p>Acquisition</p> <p>The Minister after consultation with the university council may by agreement or compulsorily acquire any land for the purposes of or in connection with the university.</p> <p>Such land shall be conveyed or transferred to the Crown and may be dealt with as unalienated land.</p> <p>Any unalienated land may be:</p> <ul style="list-style-type: none"> granted in fee simple to the university or any affiliated education institution subject to conditions, limitations or restrictions as the Governor in Council determines; or reserved either permanently or temporarily as a site for the purposes of the university or any such institution. 	<p>Curtin University, Edith Cowan University Murdoch University:</p> <p>Each university may:</p> <ul style="list-style-type: none"> acquire, hold and dispose of real and personal property; grant, sell, alienate, assign or demise real and personal property; enter into a transaction for a <i>commercial purpose</i> (defined as obtaining income through the leasing of University land); and participate in any <i>commercial arrangement</i> (defined as a company, partnership, trust, joint venture, arrangement for sharing profits or arrangement for sponsorship) that has a commercial purpose. <p>The universities may:</p> <ul style="list-style-type: none"> grant leases of University land for any term not exceeding 21 years; and with the approval of the Minister, grant leases of any University land for a term that exceeds 21 years but does not exceed 99 years <p>*University of Western Australia Act does not contain such express commercial powers; however, it does contain a power to:</p> <ul style="list-style-type: none"> grant leases of University land for any term not exceeding 21 years; with the approval of the Minister, grant leases of any University land for a term that exceeds 21 years but does not exceed 99 years; and mortgage any University lands.

Other commercial powers

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<p>The University may:</p> <ul style="list-style-type: none"> ▪ borrow money ▪ charge for work done, services rendered and goods and information supplied by it; ▪ form and participate in the formation of companies, enter into partnerships; ▪ participate in joint ventures and arrangements for profit; ▪ enter into contracts; ▪ invest money of the university and dispose of investments. <p>*The power to form a company and enter into joint ventures is limited to where the objective and purpose of those powers are consistent with the functions of the university.</p>	<p>Each university may:</p> <ul style="list-style-type: none"> ▪ borrow money; ▪ invest funds; and ▪ promote, establish or participate in partnerships, trusts, companies, other incorporated bodies or joint ventures 	<p>The University has the power to enter into contracts, create, develop, apply for, obtain and hold intellectual property and rights and enter into agreements or arrangements for commercial exploitation of those rights.</p> <p>The university may obtain an advance by way of loan from the Treasurer, on overdraft from an ADI or from any other person.</p> <p>The university may establish trading, research or other corporations for the purpose of promoting or assisting the University in connection with its functions.</p>	<p>Joint ventures and companies</p> <p>Each university may be a member of, form, or manage a corporation whose objects include:</p> <ul style="list-style-type: none"> ▪ providing teaching, research, development, consultancy or other services for public or private entities; ▪ helping or engaging in the development or promotion of the university's research or application or use of the results of the research; ▪ preparing, publishing, distribution or licensing the use of artistic work, audio or audiovisual material or computer software; 	-	<p>The University has the power to:</p> <ul style="list-style-type: none"> ▪ form, and participate in the formation of, companies; ▪ subscribe for and purchase shares in, and debentures and other securities of, companies; ▪ enter into partnerships; ▪ participate in joint ventures and arrangements for the sharing of profits; ▪ borrow money. 	<p>Borrowing</p> <p>Each university may borrow money, obtain financial accommodation and, enter into and perform financial arrangements, for the purpose of carrying out or performing any of its powers, authorities, duties or functions.</p> <p>Investments</p> <p>Each university may invest any money of the university in any manner authorised by the university council.</p>	<p>Borrowing</p> <p>Each university may borrow money, obtain credit, issue, acquire, hold or dispose of debt paper, create and issue capital instruments; and arrange for financial accommodation to be extended to the University.</p> <p>Investments</p> <p>Each university has the power to invest on terms authorised by the university council.</p>



Other commercial powers - continued

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
			<ul style="list-style-type: none"> exploiting commercially a facility a resource of the university; and another object that the university council considers appropriate in the circumstances. <p>Use of facilities and staff</p> <p>Each university may enter into a contract or other arrangement with an entity for the use of the university's facilities and the provision of services by the university's staff.</p>			<p>Joint ventures and companies</p> <p>Each University may be a member of, form, manage or participate in a company association, trust or partnership, or enter into a joint venture for one of the following purposes:</p> <ul style="list-style-type: none"> providing teaching, research, development, consultancy or other services for public or private entities; assisting or engaging in the development or promotion of the university's research or application or use of the results of the research; preparing, publishing, distribution or licensing the use of artistic work, audio or audiovisual material or computer software; exploiting commercially a facility' a resource of the university; and another object that the university council considers appropriate in the circumstances 	

Approvals / other requirements

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<p>The university's power to borrow money is subject to limits determined by the Finance Minister regarding the amount of money borrowed and periods of which money may be borrowed.</p>	<p>Leasing</p> <p>A university cannot lease land for a term greater than 21 years or alienate or mortgage, charge or demise land acquired by the University from the State at nominal or less than market value, without the Minister's approval.</p> <p>Property vested in the Crown</p> <p>Where property used by a university is vested in the Crown or a Minister, the university cannot alienate, mortgage, charge or demise such land. However, the university may lease the land for a term not greater than 21 years except with Minister's approval, and must contain a condition the lease cannot be assigned.</p>	<p>The money of the University (whether forming part of the investment common fund or not) can only be invested in a class of investment approved by the Treasurer.</p>	<p>Public universities in Queensland are statutory bodies under the <i>Statutory Bodies Financial Arrangements Act 1982</i> (Qld). The object of that Act is to provide for the efficient and effective management of the powers of statutory bodies to enter into financial arrangements.</p>	<p>A university must not alienate land contrary to the terms of a trust relating to the land.</p> <p>A university must not alienate (except by way of lease for a term not exceeding 21 years), mortgage or charge land vested in or conveyed to a university on trust except with, and in accordance with any terms and conditions of, the Governor's approval.</p> <p>*Exception – Restrictions do not apply to Torrens University Australia which is registered as an Australian public company limited by shares</p>	<p>The University is not to exercise its power to borrow money without the Treasurers prior written approval.</p>	<p>Acquired land</p> <p>A university must not, without the prior approval of the Minister, alienate (whether in fee simple or for a lessor estate or interest, except a leasehold interest not exceeding 21 years) any land which has been acquired by the Minister and granted to the university in fee simple.</p>	<p>Commercial dealings with and leasing of land</p> <p>In respect of any dealings with 'University land' vested in a university by the State, the university must obtain approval from the Minister:</p> <ul style="list-style-type: none"> ▪ when entering into a [leasing] transaction for a commercial purpose or participating in a commercial arrangement that has a commercial purpose; ▪ prior to granting a lease with a term exceeding 21 years.



Approvals / other requirements - continued

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
			<p>Accordingly, any commercial activity which requires a Queensland public university to enter into a financial arrangement may potentially be governed by that Act, including for example:</p> <ul style="list-style-type: none"> ▪ to borrow ▪ to invest ▪ to act as a trustee ▪ to hold property ▪ to create encumbrances over property and income ▪ to enter into derivative transactions ▪ to enter into a joint venture or a partnership. <p>Borrowing</p> <p>For example, in the case of the power to borrow money, universities are required to first obtain the Treasurer's approval pursuant to the <i>Statutory Bodies Financial Arrangements Act 1982 (Qld)</i>.</p>			<p>Other land</p> <p>For all other land, a university must not, without the prior approval of the Minister –</p> <ul style="list-style-type: none"> ▪ alienate any interest in fee simple of any land owned by the university if the sum of the consideration for the transfer or conveyance exceeds \$5,000,000 or any other amount that the Minister fixes by instrument published in the Government Gazette; and ▪ grant a lease for a term exceeding 21 years. <p>Borrowing</p> <p>A university may exercise its borrowing powers within the limits and the upon conditions approved by the Treasurer in consultation with the Minister.</p>	<p>Borrowing</p> <p>Where the University borrows money, they must give notice to the Minister and notify the Minister of the outcome of the application to borrow money.</p> <p>The Treasurer may, on the recommendation of the Minister, guarantee the performance of any financial obligation of the University.</p> <p>*The University of Western Australia must obtain Ministerial approval prior to granting a lease of University land for a term exceeding 21 years, but not exceeding 99 years.</p>

Regulation of the use of revenue

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
The council of each university must apply financial assistance from the Commonwealth, student contributions, tuition fees and any other money received by the university only for the purposes of the university.	Each university may generate revenue for the purpose of funding the promotion of its object and the carrying out of its principal functions.	Subject to the terms of a trust, money in the university's accounts must be applied by or with the authority of the council only for the purposes of the university.	Subject to the terms of a relevant trust, amounts received by the university from any source are to be applied solely to university purposes.	-	Any fees paid to or recovered by the University under a by-law are to be applied for the general purposes under the governing statute.	Subject to the governing Acts, all fees and all other money received by or on behalf of the university must be applied by the University solely for the objects or purposes of the university.	Each university may generate revenue for the purpose of funding the carrying out of its functions.

