

University Legislation Amendment Bill 2004

New South Wales

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Under section 33-15 of the *Higher Education Support Act 2003* of the Commonwealth, higher education providers are required to meet the requirements of the Commonwealth's National Governance Protocols for higher education providers to qualify for increased Commonwealth funding. The object of this Bill is to amend the Acts that establish universities in New South Wales to the extent necessary to enable the Universities to comply with those requirements.

In relation to each University, the amendments:

- (a) alter, and impose requirements in relation to, the composition of the University's governing body (including limiting its membership to no more than 22 members, removing the requirement that it include members of Parliament, allowing the Minister to appoint members of Parliament as members only if on the nomination of the governing body, requiring the majority of its members to be external to the University, requiring its members to possess certain expertise and experience, and requiring procedures for the nomination of appointed members to be set out in the University's by-laws), and
- (b) particularise certain of the functions of the University's governing body (including overseeing the University's performance, approving the University's mission, strategic direction, annual budget and business plan, overseeing risk management across the University, approving and monitoring the University's systems of accountability, ensuring that the University's grievance procedures and associated information are published in a form that is readily accessible to the public, regularly reviewing its own performance, adopting a statement of its primary responsibilities, and making available a program of induction and development for its members), and
- (c) note generally the governing body's obligations under the *Annual Reports (Statutory Bodies) Act 1984*, and
- (d) impose requirements on the governing body relating to the control and monitoring of entities controlled by the University, and
- (e) provide for the duties of members of the University's governing body (being to act in the best interests of the University, to exercise care and diligence, to not improperly use the position of member or improperly use information, and to disclose material interests to avoid a conflict of interest) and for removal of a member from office for breach of duty if such a motion is supported by a two-thirds majority of members of the governing body, and
- (f) require the Minister and the governing body to take into account the need to maintain an appropriate balance of experienced and new members when appointing members and (in the case of the governing body) when making by-laws with respect to the terms of elected members and provide (except where a more stringent limit is already provided for in the University's Act) that the maximum incumbency for a member of the governing body is 12 consecutive years unless the governing body otherwise resolves, and
- (g) alter the grounds on which the office of member of the governing body is vacated (most significantly by requiring the office of a member of the governing body to be vacated if the member is or becomes disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the

Commonwealth), and

(h) enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act, and insert other provisions of a savings or transitional nature (including in relation to the constitution and continuity of the governing body, the application of the proposed provisions dealing with the removal from office of a member of the governing body for breach of duty, and the period to be counted for the purposes of the proposed provision dealing with the maximum incumbency for members of the governing body).

The Bill also:

- (a) incorporates certain uncommenced amendments from the *University Legislation (Amendment) Act 1994* that replace the provisions in the *Macquarie University Act 1989* and the *Southern Cross University Act 1993* relating to the making of rules with provisions (parallel to those contained in the other Universities' Acts) that make it clear that the by-laws may authorise the making of rules with respect to matters for which by-laws may be made (except with respect to matters such as the constitution of, and the election of members to, the University's governing body, the offices of Chancellor and Deputy Chancellor, and the making, publication and inspection of rules), and
- (b) repeals the *University Legislation (Amendment) Act 1994* and the *Statute Law (Miscellaneous Provisions) Act (No 2) 1999*, and
- (c) makes a number of ancillary and consequential amendments to the Universities' Acts.

The amended Acts are as follows:

Charles Sturt University Act 1989 No 76

Macquarie University Act 1989 No 126

Southern Cross University Act 1993 No 69

University of New England Act 1993 No 68

University of New South Wales Act 1989 No 125

University of Newcastle Act 1989 No 68

University of Sydney Act 1989 No 124

University of Technology, Sydney, Act 1989 No 69

University of Western Sydney Act 1997 No 116

University of Wollongong Act 1989 No 127

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the Acts amended by Schedules 1–10.

Clause 4 repeals the *Statute Law (Miscellaneous Provisions) Act (No 2) 1999* (the only unspent provisions of which amend the *Macquarie University Act 1989* in relation to the constitution of its governing body).

Clause 5 repeals the *University Legislation (Amendment) Act 1994* (the only unspent provisions of which will become redundant as a result of the proposed amendments described in the Overview to the *Macquarie University Act 1989* and the *Southern Cross University Act 1993* that replace the provisions in those Acts relating to the making of rules).

Schedule 1 makes the amendments described in the Overview to the *Charles Sturt University Act 1989*.

Schedule 2 makes the amendments described in the Overview to the *Macquarie University Act 1989*.

Schedule 3 makes the amendments described in the Overview to the *Southern Cross University Act 1993*.

Schedule 4 makes the amendments described in the Overview to the *University of*

New England Act 1993.

Schedule 5 makes the amendments described in the Overview to the *University of New South Wales Act 1989*.

Schedule 6 makes the amendments described in the Overview to the *University of Newcastle Act 1989*.

Schedule 7 makes the amendments described in the Overview to the *University of Sydney Act 1989*.

Schedule 8 makes the amendments described in the Overview to the *University of Technology, Sydney, Act 1989*.

Schedule 9 makes the amendments described in the Overview to the *University of Western Sydney Act 1997*.

Schedule 10 makes the amendments described in the Overview to the *University of Wollongong Act 1989*.