



New South Wales

University of Western Sydney Act 1997 No 116

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New South Wales

University of Western Sydney Act 1997 No 116

Act No 116, 1997

An Act to provide for the constitution and functions of the University of Western Sydney; to repeal the *University of Western Sydney Act 1988*; and for other purposes. [Assented to 9 December 1997]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *University of Western Sydney Act 1997*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Divisions 1 and 4 of Part 2 of Schedule 4 to this Act commence on the date of assent to this Act.

3 Definitions

- (1) In this Act:

Academic Senate means the Academic Senate of the University.

Board means the Board of Trustees of the University.

Council means the Council of a University Member.

exercise a function includes perform a duty.

function includes a power, authority or duty.

University means the University of Western Sydney established by this Act.

University Member means an educational institution or body, or part of an educational institution or body, established as a University Member under section 7.

- (2) In this Act, a reference to a graduate of the University is a reference to a person who is the recipient of a degree or diploma, or of such other award or certificate as may be prescribed by the by-laws, conferred or awarded:
 - (a) by the University, or

- (b) by or on behalf of any institution or body that has, pursuant to this Act or otherwise, become a University Member, or a part of, the University, or
- (c) by any predecessor of any such institution or body.

4 Notes

Notes in the text of this Act do not form part of this Act.

Part 2 Constitution and functions of University

5 Establishment of University

A University is established by this Act, consisting of:

- (a) a Board of Trustees, and
- (b) the Councils of the University Members, and
- (c) the staff of the University, and
- (d) the graduates and students of the University.

Note. The University is a continuation of the University established by the *University of Western Sydney Act 1988*. Refer to Schedule 4.

6 Incorporation of University

The University is a body corporate under the name of the University of Western Sydney.

7 Structure of University

- (1) The University's structure is that of a federation, consisting of:
 - (a) the office of the Vice-Chancellor, and
 - (b) the University Members.
- (2) The Governor may, by order made on the recommendation of the Minister and published in the Gazette, establish as a University Member:
 - (a) any educational institution that is part of the University or is set up by the University, or
 - (b) any public educational institution or body, or
 - (c) part of any such educational institution or body.
- (3) The establishment of a University Member under this section does not make the University Member a separate legal personality.

Note. On the commencement of this section, the University Members comprise:

- (a) the University of Western Sydney, Hawkesbury, and
- (b) the University of Western Sydney, Macarthur, and
- (c) the University of Western Sydney, Nepean.

8 Functions of University

- (1) The functions of the University (within the limits of its resources) include:
 - (a) the provision of educational facilities of a university standard, having particular regard to the needs and aspirations of residents of Greater Western Sydney, and
 - (b) the achievement of excellence, through a commitment to scholarship, teaching, learning and research and the provision of educational services, in the regional, national and international community, beginning in the community of Greater Western Sydney, and
 - (c) the dissemination and increase of knowledge, the undertaking and promotion of research and scholarship and contribution to the intellectual life of Greater Western Sydney, and
 - (d) the development of consultancy and entrepreneurial activities, including research and development initiatives, that will contribute to the development of Greater Western Sydney, and
 - (e) the conferring of diplomas and the degrees of Bachelor, Master and Doctor and other certificates and awards.
- (2) The University has such other functions as are conferred or imposed on it by or under this or any other Act.

9 Facilities to be provided for students

The University may, for the purpose of exercising its functions, provide such facilities for its students as it considers desirable.

Part 3 Governance of University

10 Board of Trustees

There is to be a Board of Trustees of the University.

11 Functions of Board

- (1) The Board is the governing authority of the University and has the following functions:
 - (a) the development of broad policies and strategic plans with respect to the University,
 - (b) generally defining the University's educational profile,
 - (c) the management of the University's resources and the monitoring of the University's performance,
 - (d) representation of the University as occasion requires.
- (2) The Board has such other functions as are conferred or imposed on it by or under this Act or any other Act.

12 Membership of Board

- (1) The Board is to consist of:
 - (a) parliamentary members, and
 - (b) official members, and
 - (c) appointed members, and
 - (d) elected members.
- (2) The parliamentary members of the Board comprise:
 - (a) one Member of the Legislative Council elected by the Legislative Council:
 - (i) as soon as practicable after each periodic Council election within the meaning of section 3 of the *Constitution Act 1902*, or
 - (ii) if there is a casual vacancy in the office of that member of the Board, as soon as practicable after that office becomes vacant, and

- (b) one Member of the Legislative Assembly elected by the Legislative Assembly:
 - (i) as soon as practicable after each general election of Members of the Legislative Assembly, or
 - (ii) if there is a casual vacancy in the office of that member of the Board, as soon as practicable after that office becomes vacant.
- (3) The official members of the Board comprise:
 - (a) the Chancellor (if the Chancellor is not otherwise a member of the Board), and
 - (b) the Vice-Chancellor, and
 - (c) the Chair of each Council, and
 - (d) the Chair of the Academic Senate.
- (4) The appointed members comprise 4 persons appointed by the Minister who, in the opinion of the Minister:
 - (a) each have an interest in Greater Western Sydney and its development or an interest in the students or other clients of the University, and
 - (b) bring to the Board suitable levels of knowledge, skills and experience in matters such as strategic planning, human resources or educational or financial matters.
- (5) The elected members of the Board comprise:
 - (a) one person:
 - (i) who is a member of the academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (b) one person:
 - (i) who is a member of the general staff of the University, and

- (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the general staff of the University in the manner prescribed by the by-laws, and
 - (c) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
 - (d) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a graduate of the University but who is not a member of the staff of the University and is not a student of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by graduates of the University in the manner prescribed by the by-laws.
- (6) The Board may appoint any other person who is not a student or a member of staff of the University to be a member of the Board and the person, on being appointed, is taken to be an appointed member of the Board in addition to the members appointed under subsection (4).

- (7) No more than one person may hold office at any one time as an appointed member under subsection (6).
- (8) Schedule 1 has effect in relation to the members and procedure of the Board.
- (9) For the purposes of this section, *general staff* of the University excludes the academic staff of the University.

13 Chancellor

- (1) The Board is to elect a person (whether or not a member of the Board) to be the Chancellor of the University, and is to do so:
 - (a) at its first meeting or as soon as practicable thereafter, and
 - (b) whenever a vacancy in the office of Chancellor occurs.
- (2) The Chancellor, unless he or she sooner resigns as Chancellor, holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chancellor:
 - (a) is to advise and assist the Vice-Chancellor in the exercise of his or her functions under this Act, and
 - (b) is to exercise a pastoral role within the University, and
 - (c) has such other functions as are conferred or imposed on the Chancellor by or under this or any other Act.

Note. Schedule 1 also provides that the Chancellor is to preside at all meetings of the Board or a committee of the Board at which he or she is present.

14 Deputy Chancellors

- (1) Each person holding office for the time being as the Chair of a Council is a Deputy Chancellor of the University.
- (2) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, a Deputy Chancellor appointed from time to time by the Board in accordance with the by-laws has all the functions of the Chancellor.

- (3) No more than one person may be appointed under this section at any one time to exercise the functions of the Chancellor.

15 Vice-Chancellor

- (1) The Board is to appoint a person (whether or not a member of the Board) to be Vice-Chancellor of the University, and is to do so whenever a vacancy in the office of Vice-Chancellor occurs.
- (2) The Vice-Chancellor holds office for such period, and on such conditions, as the Board determines.
- (3) The Vice-Chancellor:
 - (a) is the chief executive officer of the University and the academic and administrative head of the University, and
 - (b) is to exercise stewardship of the University on behalf of the Board, and
 - (c) has such other functions as may be prescribed by the by-laws or determined, subject to the by-laws, by the Board.
- (4) The Vice-Chancellor may establish committees to assist the Vice-Chancellor in the exercise of his or her functions under this Act.
- (5) The Vice-Chancellor is a member of every committee that is established by the Board, the Vice-Chancellor, a Council or a principal executive officer of a University Member.
- (6) The by-laws may provide that the position of Vice-Chancellor is to be referred to by a particular title (instead of or in addition to the title of Vice-Chancellor) and the use of that title has for all purposes the same effect as the use of the title of Vice-Chancellor.

16 Councils of University Members

- (1) There is to be a Council of each University Member.
- (2) The Council of a University Member is to be established as soon as practicable after the University Member is established under section 7.

- (3) A Council of a University Member:
 - (a) is, without limiting the authority of the Board, responsible for the internal governance of the University Member concerned (subject to this Act and the by-laws), and
 - (b) is a standing committee of the Board, and
 - (c) has such other functions as may be prescribed by the by-laws.
- (4) Each Council is to consist of:
 - (a) the Chair of the Council (if not otherwise a member of the Council), and
 - (b) such other members as the by-laws prescribe.
- (5) The by-laws may provide for:
 - (a) the constitution and membership of a Council, subject to subsection (4) (a), including the election, appointment, removal and vacation from office of members and the terms of office of members, and
 - (b) the procedure of a Council.
- (6) A matter or thing done by the University, a Council or a member of a Council, or any person acting under the direction of the University or the Council, does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member of the Council or a person so acting personally to any action, liability, claim or demand.

17 Chairs of Councils

- (1) The Board is to appoint a person (whether or not a member of the Council) to be the Chair of a Council, and is to do so whenever a vacancy in the office of Chair of the Council occurs.
- (2) The person appointed must not be the Chancellor, a student or member of staff of the University.
- (3) The Chair of a Council holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.
- (4) The Chair of a Council has such functions as may be prescribed by the by-laws.

18 Principal executive officers of University Members

- (1) The Board is to appoint a person (whether or not a member of the Board) to be the principal executive officer of a University Member, and is to do so:
 - (a) as soon as practicable after the University Member is established under section 7, and
 - (b) whenever a vacancy in the office of principal executive officer of the University Member occurs.
- (2) A principal executive officer holds office for such period, and on such conditions, as the Board determines.
- (3) A principal executive officer of a University Member:
 - (a) is the academic and administrative head of the University Member (subject to the authority of the Vice-Chancellor), and
 - (b) has such other functions as may be prescribed by the by-laws or determined, subject to the by-laws, by the Board.
- (4) The by-laws may provide that the position of principal executive officer of a University Member is to be referred to by a particular title (instead of or in addition to the title of principal executive officer) and the use of that title has for all purposes the same effect as the use of the title of principal executive officer of a University Member.

19 Visitor

- (1) The Governor is the Visitor of the University but has ceremonial functions only.
- (2) Accordingly, the Visitor has no functions or jurisdiction with respect to the resolution of disputes or any other matter concerning the affairs of the University (other than a matter involving the exercise of ceremonial functions only).

20 Academic Senate

- (1) There is to be an Academic Senate of the University.
- (2) The Academic Senate:
 - (a) is the peak forum of the University for academic debate and discourse, and

- (b) is the primary custodian of academic values and standards for the University, and
 - (c) is a standing committee of the Board, and
 - (d) has such other functions as may be prescribed by the by-laws.
- (3) The by-laws may provide for the constitution of the Academic Senate, including the election or appointment of members of the Academic Senate and the terms and conditions of office of those members.

21 Chair of Academic Senate

- (1) The Academic Senate is to appoint a person to be the Chair of the Academic Senate, and is to do so whenever a vacancy in the office of Chair of the Academic Senate occurs.
- (2) The Chair of the Academic Senate holds office for such period (not exceeding 2 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chair of the Academic Senate has such functions as may be prescribed by the by-laws.

Part 4 Functions of Board

Division 1 General

22 Powers of Board

- (1) The Board:
- (a) may provide such courses as it thinks fit and, in conferring and awarding degrees and diplomas, issue such certificates in the nature of degrees, diplomas or other awards as it thinks fit, and
 - (b) may appoint and terminate the appointment of staff of the University, and
 - (c) has the control and management of the affairs and concerns of the University and is to act in all matters concerning the University in such manner as appears to it to be best calculated to promote the objects and interests of the University, and
 - (d) may recommend to the Minister the establishment of a new University Member, and
 - (e) may borrow money for the purpose of exercising any of its functions, for the renewal of loans or the discharge or partial discharge of any indebtedness to the Treasurer or to any bank, building society, credit union or other financial institution, within such limits, to such extent and on such conditions as to security or otherwise as the Governor, on the recommendation of the Treasurer, may approve, and
 - (f) may invest any funds belonging to or vested in the University, and
 - (g) may establish or participate in such trusts, companies or other incorporated bodies as it considers appropriate to promote the objects and interests of the University, and
 - (h) may engage in the commercial development of any discovery or invention, or of any intellectual property, in which the University has a right or interest, and
 - (i) may establish and maintain branches and colleges of the University, within the University and elsewhere, and

- (j) may make loans and grants to students, and
- (k) may impose fees, charges and fines.
- (2) The powers of the Board under this section are to be exercised subject to the by-laws.
- (3) Schedule 2 has effect in relation to the investment of funds by the Board.

23 Delegation

The Board may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its functions (except this power of delegation) to any of the following bodies or persons:

- (a) a Council,
- (b) a member of the Board,
- (c) a committee of the Board,
- (d) an authority or officer of the University,
- (e) any other person or body prescribed by the by-laws.

Division 2 Property

24 Powers of Board relating to property

- (1) The Board:
 - (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise, and
 - (b) has the control and management of all real and personal property at any time vested in or acquired by the University, and may, subject to this section, dispose of property in the name and on behalf of the University.
- (2) The Board must not, except with the approval of the Minister, alienate, mortgage, charge or demise any lands of the University.

- (3) The Board may, without the approval of the Minister, lease any lands of the University if:
 - (a) the term of the lease does not exceed 21 years, and
 - (b) the Board is satisfied that it is to the benefit of the University, whether from a financial or educational standpoint or otherwise, that the lease be entered into.
- (4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease:
 - (a) is to be for a term not exceeding 99 years, and
 - (b) is to be at a nominal rent, and
 - (c) is to contain a condition that the lease is not to be assigned and such other conditions as the Board thinks fit.
- (5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

25 Acquisition of land

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) The Minister may do so only if the University:
 - (a) applies to the Minister for acquisition of the land, and
 - (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (3) For the purposes of the *Public Works Act 1912*, any acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (4) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this section.

26 Powers of Board over certain property vested in Crown

- (1) If any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Board has the control and management of that property and is responsible for its maintenance.
- (2) Nothing in subsection (1) enables the Board to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).
- (3) Despite subsection (2), the Board may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.
- (4) Such a lease:
 - (a) is to be for a term not exceeding 21 years, and
 - (b) is to contain a condition that the lease is not to be assigned and such other conditions as the Board thinks fit.
- (5) The Board is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

27 Grant or transfer of certain land to University

- (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:
 - (a) if it is vested in the Crown—be transferred to the University subject to such trusts, conditions, covenants, provisions, exemptions and reservations as the Minister for Land and Water Conservation thinks fit, or
 - (b) if it is vested in a Minister of the Crown—be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister thinks fit.

- (2) A conveyance, transfer or other instrument executed for the purposes of this section:
 - (a) is not chargeable with stamp duty, and
 - (b) is exempt from payment of any fee or charge that would otherwise be payable under any Act in respect of the registration of the conveyance, transfer or other instrument.

Division 3 Variation of trusts

28 Definitions

In this Division:

donor, in relation to a trust, means the person creating the trust, whether or not the trustee is a volunteer.

prize includes a scholarship or exhibition.

29 Trusts to which this Division applies

This Division applies to a trust, whether created before or after the commencement of this section:

- (a) by which any property is held:
 - (i) by the University on trust for a particular purpose, or
 - (ii) by any person on trust for the University for a particular purpose, and
- (b) the terms of which, by reason of the death or incapacity of the donor or otherwise, could not, but for the provisions of this Division, be varied without the order of a court.

30 Variation of amount of prize

- (1) If the terms of a trust provide for the award from time to time, out of the income from the trust property or its proceeds, of a prize for a fixed amount of money, the Board may request the Minister to effect a variation of the amount of the prize if in the opinion of the Board:

- (a) the value of the amount the prize has been so affected by monetary inflation that it no longer reflects the intentions of the donor with respect to the value and significance of the prize, or
 - (b) the income of the trust property or its proceeds is insufficient to support the award of the prize or the continuation of the award of the prize.
- (2) The Minister may, if satisfied that it is just and equitable to do so, determine to vary the amount of the prize in accordance with the Board's request.
- (3) On delivery to the Board of an instrument in writing signed by the Minister and specifying such a variation, the trust concerned is varied accordingly.

31 Variation of terms of trust

- (1) If:
 - (a) by the terms of a trust, any property is held:
 - (i) on trust for a charitable purpose, or
 - (ii) on trust for a purpose of the University other than its general purposes, and
 - (b) in the opinion of the Board, it is impossible or inexpedient, or not in the reasonable interests of the University, to carry out or observe the terms of the trust, whether as to its purpose or any other of its terms,

the Board may request the Minister to effect a variation of the terms of the trust.
- (2) The Minister may, if satisfied that it is just and equitable to do so, and with the concurrence of the Attorney General, determine to vary the terms of the trust concerned in accordance with the Board's request.
- (3) In the making of any such determination, regard is to be had:
 - (a) to what appear to have been the intentions of the donor in creating the trust, and

- (b) to the extent to which it may be necessary to depart from the terms of the trust concerned in order to avoid the impossibility or inexpediency complained of or to enable the trust to be carried out or observed in a manner that is in the reasonable interests of the University.
- (4) On delivery to the Board of an instrument in writing signed by the Minister and specifying a variation of the terms of the trust concerned, the trust is varied accordingly.

32 Further variation

A trust that has been varied in accordance with this Division may, in the same manner, be further varied from time to time.

Part 5 General

33 Advance by Treasurer

The Treasurer may, with the approval of the Governor, advance to the Board money for the temporary accommodation of the University on such terms and conditions in relation to repayment and interest as may be agreed.

34 Financial year

The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b)—the year commencing 1 January, or
- (b) the period prescribed by the by-laws for the purposes of this section.

35 No religious or political discrimination

A person must not, because of his or her religious or political affiliations, views or beliefs, be denied admission as a student of the University or progression within the University or be ineligible to hold office in, to graduate from or to enjoy any benefit, advantage or privilege of, the University.

36 Exemption from membership of body corporate

A student or graduate of the University or a member of staff of the University is entitled to be exempted by the Board, on grounds of conscience, from membership of the body corporate of the University.

37 Re-appointment or re-election

This Act does not prevent a person from being immediately, or at any time, re-appointed or re-elected to any office or place, if otherwise qualified and eligible for such appointment or re-election.

38 Limited tenure in certain positions

- (1) This section applies in respect of the following positions:
 - (a) Chancellor,

- (b) appointed member of the Board,
 - (c) elected member of the Board,
 - (d) Chair of a Council.
- (2) A person who holds office in a position to which this section applies for 2 consecutive terms is not eligible for re-election or re-appointment to that position, if such re-election or re-appointment would result in the person holding office in that position for 3 consecutive terms.
- (3) However, the Minister may, by order, grant a person an exemption from this section, so as to enable the person to be re-elected or re-appointed to the position for a third consecutive term of office.
- (4) If so re-elected or re-appointed, the person is not eligible to be re-elected or re-appointed to the position for a fourth consecutive term of office.
- (5) If the office of a position to which this section applies becomes vacant otherwise than because of the expiration of the term of office of the office holder, and a person is appointed or elected to fill that office for the remainder of that term, that term of office of the person is not to be counted for the purposes of this section, unless the remaining term exceeds half the maximum single term of office for that position.
- (6) For the purposes of subsection (5), the maximum single term of office for a position is as follows:
 - (a) in the case of the Chancellor—4 years,
 - (b) in the case of an appointed member of the Board—4 years,
 - (c) in the case of an elected member of the Board referred to in section 12 (5) (a), (b), (c) or (d)—2 years,
 - (d) in the case of an elected member of the Board referred to in section 12 (5) (e)—4 years,
 - (e) in the case of the Chair of a Council—4 years.

39 Seal of University

The seal of the University is to be kept in such custody as the Board may direct and is only to be affixed to a document pursuant to a resolution of the Board.

40 By-laws

- (1) The Board may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the following:
 - (a) the management, governance and discipline of the University,
 - (b) the election of members of the Board (other than the parliamentary members) who are to be elected,
 - (c) the manner and time of convening, holding and adjourning the meetings of the Board, a Council or the Academic Senate,
 - (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Board, a Council or the Academic Senate,
 - (e) the functions of the presiding member of the Board, a Council or the Academic Senate,
 - (f) the conduct and record of business of the Board, a Council or the Academic Senate,
 - (g) the appointment of committees of the Board, a Council or the Academic Senate,
 - (h) the quorum and functions of committees of the Board, a Council or the Academic Senate,
 - (i) the resignation of members of the Board, a Council or the Academic Senate and of the Chancellor, Deputy Chancellor or Vice-Chancellor,
 - (j) the tenure of office, stipend and functions of the Vice-Chancellor,

- (k) the number, stipend, manner of appointment and dismissal of deans, professors, lecturers, examiners and other officers and staff of the University,
- (l) admission to, enrolment in and exclusion from courses of studies,
- (m) the creation of faculties, schools, departments, centres or other entities within the University,
- (n) the payment of such fees and charges, including fines, as the Board considers necessary, including fees and charges to be paid in respect of the following:
 - (i) entrance to the University,
 - (ii) tuition,
 - (iii) lectures and classes,
 - (iv) examinations,
 - (v) residence,
 - (vi) the conferring of degrees and diplomas,
 - (vii) the provision of amenities and services, whether or not of an academic nature,
 - (viii) an organisation of students or of students and other persons,
- (o) the exemption from, or deferment of, payment of fees and charges, including fines,
- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements (including exemptions from, or deferment of, those penalties),
- (q) the course of lectures or studies for, the examinations for, and the granting of, degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours,
- (r) the examinations for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes,

- (s) the admission of students of other universities and institutions of higher education to any status within the University or the granting to graduates of such universities or institutions, or other persons, of a degree or diploma without examination,
 - (t) the establishment of residential colleges and halls of residence within the University and their conduct, and the affiliation of residential colleges,
 - (u) the affiliation with the University of any educational or research establishment,
 - (v) the provision of a scheme of superannuation for the officers and staff of the University,
 - (w) the form and use of academic dress,
 - (x) the form and use of an emblem of the University or of any college within or associated with the University,
 - (y) the exemption of persons, on grounds of conscience, from membership of the body corporate of the University,
 - (z) the making, publication and inspection of rules.
- (2) A by-law has no effect unless approved by the Governor.

Note. This Act contains other by-law making powers including:

- (a) sections 15 (6) and 18 (4), which allow the by-laws to provide for a different title for the positions of Vice-Chancellor and principal executive officer of a University Member,
- (b) sections 16 (5) and 20 (3), which allow the by-laws to provide for the constitution of the Councils of the University Members and of the Academic Senate.

41 Rules

- (1) The by-laws may empower any authority (including the Board) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for or with respect to any or all of the matters for or with respect to which by-laws may be made, except the matters referred to in sections 3 (2), 12 (5), 13 (2), 22 (1) (e) and (f) and 40 (1) (b) and clauses 1 (d) and (e) and 3 of Schedule 1.

- (2) A rule:
 - (a) has the same force and effect as a by-law, and
 - (b) may, from time to time, be amended or repealed by the Board (whether or not the Board is empowered to make such a rule), or by the authority or officer of the University for the time being empowered to make such a rule, and
 - (c) takes effect on the day on which it is published or on such later day as may be specified in the rule, and
 - (d) must indicate the authority or officer who made the rule and that it is made under this section.
- (3) In the event of an inconsistency between a by-law and a rule, the by-law prevails to the extent of the inconsistency.
- (4) The fact that a provision of this Act specifically provides for a matter to be the subject of by-laws (without mention of rules) does not prevent the matter from being the subject of rules made in accordance with this section.

42 Repeal of University of Western Sydney Act 1988 No 90

The *University of Western Sydney Act 1988* is repealed.

43 Amendment of Acts

Schedule 3 has effect.

44 Savings, transitional and other provisions

Schedule 4 has effect.

45 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Provisions relating to members and procedure of Board

(Section 12)

1 Term of office

Subject to this Act, a member of the Board holds office:

- (a) in the case of a parliamentary member, until a member of the House of Parliament that elected the member is elected as a replacement, and
- (b) in the case of an official member, while the member holds the office by virtue of which he or she is a member, and
- (c) in the case of an appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment, and
- (d) in the case of an elected member referred to in section 12 (5) (a), (b), (c) or (d) of this Act, for such term (not exceeding 2 years) as may be prescribed by the by-laws, and
- (e) in the case of an elected member referred to in section 12 (5) (e) of this Act, for such term (not exceeding 4 years) as may be prescribed by the by-laws.

2 Vacation of office

The office of a member of the Board becomes vacant if the member:

- (a) dies, or
- (b) in the case of an appointed or elected member, transfers his or her place of permanent residence to a place that is not within the State or the Australian Capital Territory, or
- (c) declines to act, or
- (d) resigns the office by writing under his or her hand addressed:
 - (i) in the case of the parliamentary member who is a Member of the Legislative Council, to the President of the Legislative Council, or

- (ii) in the case of the parliamentary member who is a Member of the Legislative Assembly, to the Speaker of the Legislative Assembly, or
 - (iii) in the case of an appointed member (other than a member appointed by the Board under section 12 (6)), to the Minister, or
 - (iv) in the case of an elected member or a member appointed by the Board under section 12 (6), to the Vice-Chancellor, or
- (e) in the case of an appointed or elected member, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
- (f) in the case of an appointed or elected member, becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) in the case of an appointed or elected member, is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, and is not, within 6 weeks after the last of those meetings, excused by the Board for his or her absence, or
- (i) in the case of the parliamentary member elected by the Legislative Council, ceases:
 - (i) to be a Member of that Council otherwise than by reason of section 22B (1) (c) of the *Constitution Act 1902*, or
 - (ii) to be a Member of that Council by reason of section 22B (1) (c) of that Act and does not become a candidate at the next periodic Council election within the meaning of section 3 of that Act or, as the case may be, becomes a candidate but is not elected, or

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- (j) in the case of the parliamentary member elected by the Legislative Assembly, ceases:
 - (i) to be a Member of that Assembly otherwise than by reason of its dissolution or its expiration by effluxion of time, or
 - (ii) to be a Member of that Assembly by reason of its dissolution or its expiration by effluxion of time and does not become a candidate at the next general election of Members of that Assembly or, as the case may be, becomes a candidate but is not elected, or
 - (k) in the case of an elected member, ceases to be qualified for election, or
 - (l) in the case of an appointed member (other than a member appointed by the Board under section 12 (6)), is removed from office by the Minister, or
 - (m) in the case of a member appointed by the Board under section 12 (6), is removed from office by the Board.

3 Filling of vacancy in office of member

- (1) If the office of any member of the Board becomes vacant, a person is, subject to this Act, to be appointed or elected to fill the vacancy.
- (2) Subclause (1) does not apply in respect of the office of the member appointed by the Board under section 12 (6).
- (3) The by-laws may provide that, in such circumstances (other than expiration of term of office) as may be prescribed, a person is to be appointed or elected (otherwise than to fill the office of a parliamentary member) in such manner as may be prescribed instead of in the manner provided for by this Act.

4 Committees of Board

- (1) The Board may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Board.

- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the committee.

5 Liability of Board members and others

A matter or thing done by the University, the Board or a member of the Board, or any person acting under the direction of the University or the Board, does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member of the Board or a person so acting personally to any action, liability, claim or demand.

6 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is to be as determined by the Board, subject to this Act and the by-laws.

7 Presiding member

- (1) The Chancellor is to preside at all meetings of the Board and of committees constituted by the Board at which the Chancellor is present.
- (2) At any meeting of the Board or a committee constituted by the Board at which the Chancellor is not present, the relevant Deputy Chancellor is to preside, and in the absence of both the Chancellor and the relevant Deputy Chancellor, a member elected by and from the members present is to preside.
- (3) The *relevant Deputy Chancellor* is the Deputy Chancellor appointed by the Board for the time being to exercise the functions of Chancellor under section 14.

8 Quorum

At any meeting of the Board, a quorum is one-half (or if one-half is not a whole number, the whole number next higher than one-half) of the total number of members for the time being of the Board.

9 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

10 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 2 Investment

(Section 22)

1 Definition of "funds of the University"

For the purposes of this Schedule, the *funds of the University* include funds under the control of the University and real property, securities or other property comprising an investment.

2 Investment powers

- (1) The Board has, in respect of the funds of the University, the investment powers conferred on the Board by Part 3 of the *Public Authorities (Financial Arrangements) Act 1987*.
- (2) If Part 3 of that Act does not confer investment powers on the Board in respect of any such funds, the Board may invest those funds:
 - (a) in any manner authorised for the investment of trust funds, or
 - (b) in any other manner approved by the Minister with the concurrence of the Treasurer.

3 Investment common funds

- (1) The Board may establish one or more investment common funds.
- (2) The Board may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the University.
- (3) Subject to subclause (4), the Board must periodically distribute the income of each 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) The Board may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

- (5) If an investment is brought into an investment common fund:
- (a) the University is to be taken to hold that investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund, and
 - (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Board at the time it is brought into the common fund, and
 - (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Board to the equity in the common fund of that participating fund at the time of withdrawal.
- (6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.
- (7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

4 Terms of trust to prevail

In respect of the trust funds of the University:

- (a) the investment powers of the Board, and
- (b) the power of the Board to bring the trust funds into an investment common fund,

are subject to any express direction in or express condition of the trust.

Schedule 3 Amendment of Acts

(Section 43)

3.1 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "Board of Governors of the University of Western Sydney".
Insert instead "Board of Trustees of the University of Western Sydney".

3.2 University Legislation (Amendment) Act 1994 No 16

Schedule 1 Amendment of University Legislation

Omit the amendments relating to the *University of Western Sydney Act 1988 No 90*.

Schedule 4 Savings, transitional and other provisions

(Section 44)

Part 1 Preliminary

1 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

Division 1 Preliminary

Note. This Division commences on assent.

2 Definitions

In this Part:

existing University Member means a University Member referred to in clause 4 of this Schedule.

former Board means the Board of Governors of the University of Western Sydney constituted under section 9 of the repealed Act.

new Board means the Board of Trustees constituted under section 12 of this Act.

repealed Act means the *University of Western Sydney Act 1988*.

Division 2 Constitution and functions of University

3 University is a continuation of the old University

- (1) The University of Western Sydney is a continuation of, and the same legal entity as, the University of Western Sydney referred to in the repealed Act.
- (2) Any provision of Schedule 3 (Savings and Transitional Provisions) to the repealed Act that, immediately before the repeal of that Act, had any ongoing operation or effect continues to have effect as if it had not been repealed.

4 University Members

- (1) On the commencement of this clause, the members of the University network established under section 6 of the repealed Act are taken to have been established as University Members by order under section 7 of this Act.
- (2) The order can be amended or repealed by order of the Governor made on the recommendation of the Minister under section 7 (2) of this Act.

Note. The repealed Act established a federated University network. Under section 6 of the repealed Act, the University network was a federation of:

- (a) the University of Western Sydney, Nepean, and
- (b) the University of Western Sydney, Hawkesbury, and
- (c) the University of Western Sydney, Macarthur, and
- (d) such other network members as may be established from time to time by order of the Governor under that section.

Division 3 Governance of University

5 Dissolution of former Board and membership of new Board

- (1) The former Board, as constituted under the repealed Act immediately before the repeal of the repealed Act, is dissolved.

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- (2) The persons holding office as members of the former Board immediately before the repeal of the repealed Act cease to hold office as such on that repeal.
- (3) The member of the Legislative Council holding office as a parliamentary member of the former Board under section 9 (3) (a) of the repealed Act immediately before the repeal of that Act:
- (a) is taken, on the repeal of that Act, to have been elected to the office of parliamentary member of the new Board under section 12 (2) (a) of this Act, and
 - (b) continues to hold office as such, subject to clause 2 of Schedule 1, until a member of the Legislative Council is elected as a replacement.
- (4) The member of the Legislative Assembly holding office as a parliamentary member of the former Board under section 9 (3) (b) of the repealed Act immediately before the repeal of that Act:
- (a) is taken, on the repeal of that Act, to have been elected to the office of parliamentary member of the new Board under section 12 (2) (b) of this Act, and
 - (b) continues to hold office as such, subject to clause 2 of Schedule 1, until a member of the Legislative Assembly is elected as a replacement.
- (5) The undergraduate student holding office as an elected member of the former Board under section 9 (6) (c) of the repealed Act immediately before the repeal of that Act:
- (a) is taken, on the repeal of that Act, to have been elected to hold office as an elected member of the new Board under section 12 (5) (c) of this Act, and
 - (b) continues to hold office as such, subject to clause 2 of Schedule 1, for the residue of the term for which he or she was elected to the former Board.

- (6) The postgraduate student holding office as an elected member of the former Board under section 9 (6) (c) of the repealed Act immediately before the repeal of that Act:
 - (a) is taken, on the repeal of that Act, to have been elected to hold office as an elected member of the new Board under section 12 (5) (d) of this Act, and
 - (b) continues to hold office as such, subject to clause 2 of Schedule 1, for the residue of the term for which he or she was elected to the former Board.

6 Chancellor

The person who, immediately before the commencement of this clause, held office as the Chancellor of the University of Western Sydney under the repealed Act continues to hold office as such (unless he or she sooner resigns) until the new Board elects a person to that office under section 13 of this Act.

7 Vice-Chancellor

- (1) The person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of Western Sydney under the repealed Act:
 - (a) remains Vice-Chancellor of the University, and
 - (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Vice-Chancellor.
- (2) The Vice-Chancellor holds office on such terms and conditions as had effect in relation to his or her office under the repealed Act immediately before the commencement of this clause, subject to any variation that is made by the new Board, and agreed to by the Vice-Chancellor, after the commencement of this clause.

8 Principal executive officers of University Members

- (1) A person who, immediately before the commencement of this clause, held office under section 16 of the repealed Act as a chief executive officer of a member of the University network (being an existing University Member):
 - (a) is taken to have been appointed as the principal executive officer of the University Member under section 18 of this Act, and
 - (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as chief executive officer.
- (2) Each principal executive officer holds office on such terms and conditions as had effect in relation to his or her position (as chief executive officer) under the repealed Act immediately before the commencement of this clause, subject to any variation that is made by the new Board, and agreed to by the principal executive officer concerned, after the commencement of this clause.

9 Academic Senate

- (1) The Academic Board, as constituted under section 23 of the repealed Act immediately before the commencement of this clause, is taken to have been constituted as the Academic Senate under section 20 of this Act.
- (2) Subject to the by-laws, a person who was appointed or elected as a member of the Academic Board and was holding office as such a member immediately before the commencement of this clause continues to hold office as a member of the Academic Senate (unless he or she sooner resigns) for the residue of the term of office for which he or she was appointed or elected as a member of the Academic Board.

10 Chair of Academic Senate

- (1) The person who, immediately before the commencement of this clause, held office as the Chair of the Academic Board of the University of Western Sydney under the repealed Act:
 - (a) is taken to have been appointed as the Chair of the Academic Senate under section 21 of this Act, and

- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed or elected as Chair of the Academic Board.
- (2) The Chair of the Academic Senate holds office on such terms and conditions as may be prescribed by the by-laws.

Division 4 Constitution of new Board and other matters

Note. This Division commences on assent.

11 Appointed members

Any person appointed by the Minister for the purposes of section 9 (5) of the repealed Act whose term of office would have expired at the end of 1997 (otherwise than because of resignation or because of the commencement of section 12 of this Act) and who holds office as an appointed member of the former Board immediately before 1 January 1998:

- (a) is taken to have been re-appointed to the office of member of the former Board for the purposes of section 9 (5) of the repealed Act for a term that expires when section 12 of this Act commences, and
- (b) on the commencement of section 12 of this Act, is taken to have been appointed as a member of the new Board for the purposes of section 12 (4) of this Act and holds office as such (unless he or she sooner resigns) for a term that expires on 1 March 1998 or such other date (whether earlier or later than 1 March 1998) as the Minister may direct by instrument in writing.

12 Former Board may appoint one new Board member

- (1) Before section 12 of this Act commences, the former Board may appoint a person to hold office as a member of the new Board for the purposes of section 12 (6) of this Act and that person is taken to have been appointed by the new Board under section 12 (6) of this Act.

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- (2) Such an appointment does not take effect until section 12 of this Act commences.
 - (3) Anything done before the commencement of this Division, that could have been done if this clause had been in force at the time that it was done, is taken to be valid if it was done in accordance with the prior approval of the Minister.

13 Elected staff members and graduate member

- (1) An election for the first elected members of the new Board, being the elected members referred to in section 12 (5) (a), (b) and (e), may be called before section 12 of this Act commences and conducted in accordance with the directions of the Vice-Chancellor (whether given before or after the commencement of this Division), instead of in the manner provided for by section 12 of this Act.
- (2) Anything done for the purpose of such an election before the commencement of this Division is taken to be valid, to the extent to which it could have been done had those directions been made at the time that it was done.
- (3) The term of office of any member of the new Board who is elected as provided for by this clause before the commencement of section 12 of this Act does not commence until section 12 of this Act commences.

Note. This clause does not apply to the elected members referred to in section 12 (5) (c) and (d), because their terms of office are continued under clause 5 of this Schedule.

14 Former Board may appoint first Chairs of Councils

- (1) Before section 12 of this Act commences, the former Board may appoint persons to hold office as Chairs of the Councils for the purposes of section 17 of this Act and those persons are taken to have been appointed by the new Board under section 17 of this Act.
- (2) Such an appointment does not take effect until section 17 of this Act commences.

- (3) Anything done before the commencement of this Division, that could have been done if this clause had been in force at the time that it was done, is taken to be valid if it was done in accordance with the prior approval of the Minister.

15 Former Board may make new by-laws

- (1) Before section 12 of this Act commences, the former Board may make any by-law under this Act that could be made by the new Board under this Act, as if section 40 of this Act had commenced.
- (2) Such a by-law may revoke any by-law made under the repealed Act. Clause 18 of this Schedule does not apply in respect of any by-law that is so revoked.
- (3) Such a by-law takes effect no earlier than the day on which section 40 of this Act commences.
- (4) On the commencement of section 12 of this Act, such a by-law is taken to have been made by the new Board and may be revoked or amended accordingly.
- (5) Anything done before the commencement of this Division, that could have been done if this clause had been in force at the time that it was done, is taken to be valid if it was done in accordance with the prior approval of the Minister.

Division 5 Functions of Board

16 Saving of delegations

Any delegation made under the repealed Act by the former Board and in force immediately before the repeal of the repealed Act is taken to be a delegation under this Act by the new Board, and may be revoked at any time by the new Board.

Division 6 General

17 Limited tenure provisions—application

Section 38 of this Act does not apply in respect of a term of office that commenced before the commencement of that section.

18 Continuation of by-laws

- (1) The by-laws of the University of Western Sydney as in force immediately before the repeal of the repealed Act:
 - (a) continue in force as if they had been made by the new Board under this Act, and
 - (b) may be amended or revoked accordingly.
- (2) In those by-laws:
 - (a) a reference to the Board of Governors of the University of Western Sydney is to be read as a reference to the Board of Trustees, and
 - (b) a reference to a member of the University network is to be read as a reference to a University Member, and
 - (c) a reference to the chief executive officer of a member of the University network is to be read as a reference to the principal executive officer of a University Member, and
 - (d) a reference to the Academic Board of the University of Western Sydney is to be read as a reference to the Academic Senate of the University of Western Sydney.

19 Continuation of rules and orders

- (1) Any rule made under section 36 of the repealed Act and in force immediately before the commencement of this clause:
 - (a) continues in force as if it had been made under section 41 of this Act, but only to the extent that it could have been made under this Act if section 41 had been in force at the time the rule was made, and
 - (b) may be amended or repealed accordingly.
- (2) Any order made under section 36 of the repealed Act and in force immediately before the commencement of this clause:
 - (a) continues in force as if it had been made under section 41 of this Act, but only to the extent that it could have been made as a rule under this Act if section 41 had been in force at the time the order was made, and
 - (b) may be amended or repealed accordingly.

- (3) Section 41 (2) (d) of this Act does not apply in respect of a rule or order made under section 36 of the repealed Act before the commencement of this clause and accordingly does not prevent the continuation of such a rule or order under this clause.

[Minister's second reading speech made in—
Legislative Assembly on 13 November 1997
Legislative Council on 26 November 1997]

BY AUTHORITY