



## Full Day Hansard Transcript (Legislative Council, 13 August 2014, Corrected Copy)

Extract from NSW Legislative Council Hansard and Papers Wednesday, 13 August 2014.

### UNIVERSITIES LEGISLATION AMENDMENT (REGULATORY REFORMS) BILL 2014

#### Second Reading

**The Hon. CATHERINE CUSACK** [8.03 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

**Leave granted.**

#### Introduction

The Universities Legislation (Regulatory Reforms) Bill 2014 continues the process of updating university legislation that was begun by the Government with the Universities Governing Bodies Act in 2011.

In introducing that Act in 2011, the Minister for Education made the important point that New South Wales universities are both major public institutions of great strategic value to the State and very significant businesses.

He indicated that university governance arrangements needed to reflect that reality and that our universities should be supported to maintain their current strengths and to continue to develop in ways that properly equip them to thrive into the future.

The 2011 Act was an affirmation of the New South Wales Coalition Government's commitment to universities' autonomy and independence, while also ensuring that proper governance arrangements are in place.

In that same spirit, the current bill will reduce the degree of direct regulation of universities by the Government regarding key aspects of financial management, land dealings and governing body election procedures.

The changes are necessary to bring university legislation in this State into the 21st century and allow universities to function in a fully-fledged way as statutory corporations in demanding commercial environments.

The bill provides universities with increased freedom to enter into commercial arrangements that support their core functions of teaching, learning, research and scholarship.

This bill recognises that university governing bodies have statutory responsibility over their own institutions. Accordingly, it reduces the amount of external regulation on universities and gives governing bodies a greater say in key aspects of university management.

#### Background and rationale for the changes

The purpose of the bill is to reduce red tape by removing unnecessary regulation of our universities. This is in accordance with the Government's Better Regulation Principles which require that regulation be periodically reviewed and, if necessary, reformed to ensure its continued efficiency and effectiveness.

Universities are currently subject to a level of regulation that impacts on their capacity to operate efficiently in an increasingly competitive higher education market. These amendments will give universities greater flexibility and reduce administrative costs.

The amendments proposed will reduce the regulatory burden on New South Wales universities, largely in the areas of financial management and commercial activities more generally.

New South Wales universities and the Government have been in dialogue for some time on removal of the range of specific regulatory requirements from university Acts that are contained in this bill.

A review of State university regulation was conducted at Minister Piccoli's request to the Hon. Gabrielle Upton MP, Minister for Sport and Recreation, in her former role as Parliamentary Secretary for Tertiary Education and Skills.

The Minister for Education accepted the advice provided by Ms Upton following her review.

The changes proposed in this bill have resulted from close consultation with New South Wales universities led by the New South Wales Vice Chancellors Committee. They dovetail neatly with amendments made in 2011 in the Universities Governing Bodies Act, which provided universities with the option of streamlining the size of their governing bodies and making the operation of governing bodies more flexible and efficient.

Consultations in relation to the major changes introduced by this bill have been held with the Treasurer, Auditor-General, Deputy Premier, New South Wales Trade and Investment, Crown Lands Division, University Chancellors and the New South Wales Vice Chancellors Committee. The Crown Solicitor has provided advice on some key matters.

### **The changes made by this bill**

This bill will remove a number of restrictions on university decision-making in areas that will now be solely the responsibility of the governing body of each university. The bill will also clarify some matters that will assist universities in their operations and decision-making.

This is a timely and appropriate development, given the broad responsibility each university Act confers on the governing body for the control and management of the affairs of the university.

The bill acknowledges that governing bodies have robust financial and commercial expertise amongst their membership that is brought to bear on their decision-making processes.

### **Financial and commercial matters**

To better support universities, the objects and functions provisions in the university Acts are amended by this bill to give more abundant certainty to a university's legal capacity to engage in activities to raise revenue.

Universities have become increasingly entrepreneurial. They need to continue to develop their ability to generate income from non-traditional sources.

Existing sections in all the Acts outline the university's objects and functions. These include exercising "commercial functions comprising the commercial exploitation or development ... of any facility, resource or property ... in which the University has a right or interest ..."

The amendment in this bill to the Objects and Functions section of the Acts clarifies that universities are able to engage in activities including commercial ventures involving property and other resources in order to generate revenue that supports their core purposes.

The bill removes the following current requirements regarding financial and commercial matters:

1. That the Governor on the recommendation of the Treasurer approves borrowings by the university.

The current requirement is that university governing bodies may "borrow money 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."

2. That the Minister, with the concurrence of the Treasurer, approves university investment powers.

This requirement states that "The (governing body) may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer." There are currently a variety of arrangements depending on transitional provisions from the former coverage of universities under the Public Authorities (Financial Arrangements) Act 1987.

3. That university funds managers are approved by the Treasurer on the recommendation of the Minister for Education.

The current section in the legislation provides, "The (governing body) may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University." It further provides, "The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions."

4. That university Guidelines for Commercial Activities are approved by the Minister on the advice of the Treasurer.

The reform provided by this bill will mean university governing bodies approve their own commercial guidelines within the existing framework. They would also retain responsibility for implementing and enforcing the guidelines. Existing checks and balances on this issue in the university Acts remain in place.

Each of these regulatory requirements has involved a series of time consuming interactions between the universities, the Department of Education and Communities and Treasury.

Their removal goes a long way to giving universities greater flexibility and capacity to respond more immediately to market dynamics in managing their own financial and commercial arrangements.

The removal of the highlighted State Government financial approval requirements is consistent with the Government's acknowledgement that universities are essentially independent corporate bodies.

Having university governing bodies fully responsible for these decisions brings greater efficiency and puts accountability squarely where it belongs.

### **University land matters**

The bill modifies the following current requirements in each university's enabling Act:

1. That the Minister for Education approves the sale, encumbrance or long-term lease of all parcels of land that a university has control of (other than Crown land).

The bill will preserve the requirement for the Minister to approve the sale, encumbrance or lease for more than 21 years of university land that was originally owned by the State and subsequently granted, transferred or sold at nominal or less than market value to a university by the State.

In many cases universities have been given land at nominal or no cost by the State and it is important the State retains an interest in any subsequent sale.

The amendment will correspondingly allow universities to deal as they see fit with land they have acquired that did not previously belong to the State.

2. That land vested in the Crown under the control and management of the university can only be leased for a maximum of 21 years.

This bill removes the limit of 21 years on leases of Crown lands vested in universities but requires that leases over 21 years need approval by the Minister for Education.

In summation, greater flexibility is proposed by this bill in the area of university land dealings, regarding both freehold land and Crown land.

A further clarification in this area provided by the bill is the amendment of a clause in the university Acts regarding the powers of the governing body relating to property. This amendment makes clear that universities in their own right may purchase property as well as acquiring it by gift, grant, bequest, devise or otherwise, for the purposes of their enabling Acts, and may agree to carry out the conditions of any such acquisition.

### **Election procedures**

In relation to each university's enabling Act, the bill removes the following current requirement:

That procedures for elections to the governing body of the university must be prescribed in by-laws rather than in rules made by the governing body.

The detail of university governing body election procedures (including timing, notification methods and method of voting) is required to be contained in by-laws approved by the Governor and subject to parliamentary oversight.

The current requirement is contained in the sections of the university Acts dealing with election to the governing body. They provide that the relevant members are to be "elected in the manner prescribed by the 8 by-laws". There are also specific requirements relating to casual vacancies.

Currently, any by-law amendment is drafted by Parliamentary Counsel, with an Executive Council minute prepared by the Department of Education and Communities to be submitted to the Governor and Executive Council. Amendments involve significant amounts of time for senior officers, both in government agencies and in universities.

This bill proposes instead that universities themselves can in future make rules to set out election procedures about the governing body rather than including them in by-laws.

The rules would not be about the categories of people who are eligible for election, such as staff and

student representatives, but the procedures by which they are elected. The categories of people who are elected are provided for by the Act itself.

There will be an additional provision in each university's Act to effect protection of the important basic principle around fairness and democratic processes in rule-making for election procedures. This will be consistent for all universities. The terms of the provision are that "Election rules must be consistent with sound and democratic electoral practices, procedures and methods of voting".

It will be the responsibility of university governing bodies to ensure that any rules made in this area comply with this principle.

The exemption for election procedures in the rule-making power of each Act will be removed by this bill.

### **Specific amendment of three university Acts**

The bill also amends three university Acts—the University of Wollongong Act, the University of Newcastle Act and the Macquarie University Act—in specific ways concerned with updating administrative arrangements and correcting anomalies.

**University of Wollongong Act:** The specific additional amendments to the University of Wollongong Act remove references to "convocation", which is a redundant concept in the university's Act and governance structure, and allow the vice-chancellor to sub-delegate functions delegated to the vice-chancellor by the University Council, when authorised to do so by the council.

**University of Newcastle Act:** The bill will correct an anomaly in the University of Newcastle Act that means the President of the Academic Senate elected by the university's academic staff cannot actually become a member of the Academic Senate unless the University Council appoints them. The bill provides that the president will automatically be a member and the chair of the Academic Senate. It will also allow the vice-chancellor to sub-delegate functions delegated to the vice-chancellor by the University Council, when authorised to do so by the council.

**Macquarie University Act:** One inaccurate cross-reference in the Act is corrected by the minor amendment proposed in the bill.

### **Accountabilities**

While this bill will remove the regulatory requirements on universities that I have outlined, it is important to maintain appropriate accountabilities that recognise the public investment and the State's economic and social interest in its universities.

Our universities are State institutions of long standing that contribute a great deal to our lives in educational, economic, social and cultural terms.

Alongside the regulatory reforms contained in this bill, public accountability arrangements will remain in place through the annual university audits and related requirements under the Public Finance and Audit Act, 1983.

Under the Annual Reports (Statutory Bodies) Act 1984, universities are also required to submit annual reports to the Minister by the end of April each year for tabling in Parliament. The reports are public documents after tabling in Parliament and must include the audited financial statements of each institution and its controlled entities.

Importantly, universities also report to the Commonwealth Government and are subject to a range of accountability requirements from the Commonwealth relating to public funding and national higher education priorities.

### **Conclusion**

The changes proposed by this bill will enable our universities to function more effectively in commercial environments as the significant statutory corporations they manifestly are.

As a result of these amendments, universities will have more flexibility and freedom in dealing with other parties to support their key missions focused on teaching, scholarship, research and community engagement.

The flexibility granted to universities by these changes is not without responsibility or appropriate checks and balances.

Important levels of oversight and accountability remain.

I commend the bill to the House.