

Bill introduced on motion by Mr Adrian Piccoli.

Agreement in Principle

Mr ADRIAN PICCOLI (Murrumbidgee—Minister for Education) [4.49 p.m.]: I move:
That this bill be now agreed to in principle.

The University Governing Bodies Bill 2011 facilitates amendments to each of the 10 Acts establishing the State's public universities. The amendments will bring the governance arrangements of New South Wales universities into line with contemporary practice. Those amendments also will give effect to key recommendations of the 2009 report of the Legislative Council General Purpose Standing Committee No. 2 entitled "Governance of NSW Universities".

Universities are a crucial part of the New South Wales education system and economy. The State needs our universities to be well equipped to meet our growing needs for skills and innovation. Last year New South Wales universities received \$1.2 billion in income from commercial sources. They are both major public institutions of great strategic significance to the State and very significant businesses. Their governance arrangements need to reflect this reality. A number of universities in New South Wales have been requesting changes to their governing body size and composition for some time. This has been a matter of particular concern to universities both before and following the report of the parliamentary committee chaired by my colleague the Hon. Robyn Parker. That is why we have moved quickly to consult with universities and introduce this bill to Parliament.

The Government has consulted widely with New South Wales public universities on a model for legislative change to university governance arrangements, and that model lies at the heart of this bill. The New South Wales Vice-Chancellors Committee has advised that all 10 of our public universities, including their chancellors and governing bodies, support the model for legislative change. The New South Wales Liberals and Nationals Government is committed to supporting a strong, contemporary regulatory framework for New South Wales universities. Our universities need to be supported to maintain their current strengths and to continue to develop in ways that properly equip them to thrive in the future. The amendments in the Universities Governing Bodies Bill 2011 chiefly will ensure that the governing bodies of New South Wales universities are able to have greater flexibility in determining their own size and composition, if they so choose.

At the same time, the bill maintains a representative model of university governance that ensures key stakeholders remain appropriately represented. Governing bodies will continue to include elected academic and non-academic staff members, and elected student members and graduate members—whilst ensuring that a majority of the membership of each governing body must be external. The changes give universities much-desired flexibility as well as the

capacity to decide the size, composition and related mix of necessary skills and experience on their governing bodies, and thus more freedom to govern themselves according to their individual missions and strategic plans. The changes also allow universities to take control over other important matters they have wanted control over for some time, such as the ability to hold meetings by electronic means, the ability to dismiss the chancellor or deputy-chancellor and, if they deem it necessary, to remunerate members.

The bill is an opt-in model that allows each university to decide for itself whether and when to introduce changes to its governance structure. The capacity to remunerate members and to dismiss a chancellor or deputy-chancellor if the need arises were key recommendations of a 2009 Legislative Council committee report entitled "Governance of NSW Universities". Currently, the capacity to dismiss a chancellor or deputy-chancellor for losing the confidence of the governing body is available to two universities only—the University of Sydney and the University of Newcastle—through provisions of their by-laws rather than in their enabling Acts. This bill will extend that capacity to all universities and place that particular power of these two universities in their Acts rather than their by-laws.

In terms of the capacity to remunerate members, all current New South Wales university legislation is silent on this issue. The bill will provide legal certainty in this area and give universities only the capacity to remunerate: They do not have to implement the provision if it does not suit their particular circumstances. For example, some regional universities may wish to take advantage of remuneration to facilitate the involvement of external members who have the necessary skills and attributes to undertake the responsibilities associated with university governance. The structure of the bill is that clause 4 in the main body of the bill provides that a university governing body can adopt the standard governing body provisions contained in schedule 1, provided that is approved by a two-thirds majority of members. If that is approved, those standard provisions will replace the existing governing body provisions in the university's Act. It is not compulsory for universities to make the changes. The legislation provides them with the flexibility to opt in only if they wish to. Such a resolution will enable the particular university governing body to determine a number of factors, such as the total number of members it will have within a specified range, the total number of members in most categories of membership, and the time when the resolution itself should come into effect.

Clause 4 of the bill sets up the mechanism for effecting those changes by an order made by the Minister for Education after receiving notice of the governing body's resolution. At the appropriate time after the ministerial order is made the university's Act will be amended and the existing replaceable provisions will cease to have effect. Schedule 1 contains the standard governing body provisions that will amend the existing replaceable provisions in university Acts. Schedule 2 provides for savings, transitional and other provisions necessary on the enactment of this bill, including the capacity for savings and transitional regulations to be made. Schedule 3 contains a number of related amendments that will be made to all university Acts, whether or not the particular university's governing body decides to opt in to the standard governing body provisions contained in schedule 1.

Schedule 3 consists of a series of amendments for each of the 10 New South Wales public universities in a clearly marked section for each. These have some small variations that reflect the particular Acts and take account of minor, local or pre-existing differences between our public universities. The changes set out in schedule 3 were identified by the universities as important reforms, whether or not the universities wish to change the number and composition of their governing bodies. Schedule 3 contains also a provision that amends the rule-making power in each university's Act. This will not come into force on assent to the bill, but only if and when a governing body decides to opt in to the standard governing body provisions contained in schedule 1. If adopted, the new governing body arrangements will require university rules, which are known as Constitution Rules, to be made to support them, rather than university by-laws as at present. The rule-making power therefore needs to change to enable the new approach to operate, but only at the appropriate time.

I now will deal with different parts of the bill in more detail and, in doing so, outline the key background issues, the amendments the bill initiates, and the approach it takes. There are six clauses in the main body of the bill. The commencement clause, clause 2, provides that, with the exception of amendments to the rule-making power in schedule 3, the Act commences on the date of assent. The definitions in clause 3 indicate the provisions in each university's Act that will be replaced by the standard governing body provisions in schedule 1 when universities choose to do so. Clause 4 is the key clause on which the bill turns. It provides the mechanism that will enable universities to adopt standard governing body provisions in schedule 1 when they choose to do so. A two-thirds majority decision by the governing body will be required to opt in. The Minister will then need to make and publish a ministerial order after the terms of the decision are conveyed to him or her.

When the resolution takes effect, the standard provisions will take the place of the existing provisions, which are the replaceable provisions, in the relevant university Act, and any necessary consequential changes also will be made to the particular university's Act and by-law. Schedule 1 contains the standard governing body provisions of the bill. The governing body of a university can decide to adopt these by a two-thirds majority decision at any time after the passage of this bill, or not adopt them at all, if it prefers to retain its current size and composition. The same categories of membership are retained in these provisions, which reflects continuing support for the representative model of governance underpinning the bill as well as the current university Acts. The schedule 1 provisions set the size range for the governing body and required categories of membership. They enable the governing body by a two-thirds majority resolution to determine its own size within the specified range and the number of members it will have within most categories. The actual numbers determined by a university are to be specified in Constitution Rules made by the governing body.

The provisions require that the governing body membership must include the following numbers across the specified categories: three official members, who are the Chancellor, Vice-Chancellor and President of the Academic Board; between two and six ministerially appointed members; at least one elected member of the academic staff; at least one elected

member of the non-academic staff; at least one elected student who is not employed on a full-time basis as a staff member of the university; at least one external person who is a graduate of the university, either elected or appointed; and such number of external persons appointed by the governing body as is prescribed by the Constitution Rules.

The bill continues important key principles that apply to the current university Acts: external members are required to be in the majority. The current representative nature of governing bodies is preserved, with all the main stakeholders represented amongst the membership. Academic staff, non-academic staff, and student members will continue to be elected, and external graduate members can be either elected or appointed, as is current practice. To maintain a continuity and balance in the overall composition of the governing body, the bill provides that no single category of membership may constitute a 12 majority.

The bill provides for a minimum of 11 and a maximum of 22 members on the governing body, with each university to determine the size considered appropriate to its circumstances. Currently, there is no specified minimum number, although the same maximum of 22 is the existing upper limit. The bill continues current provisions in the university Acts relating to the qualifications and experience of governing body members. At least two members of the governing body must have financial expertise, and at least one must have commercial expertise. These qualification requirements were incorporated into university Acts in the 2004 amendments that implemented aspects of the Howard Government's National Governance Protocols.

All appointed members—whether governing body or ministerial appointments—must have expertise and experience relevant to the functions of the governing body, and an appreciation of the object, values, functions and activities of the university. Each university's constitution rules are to prescribe the number of people who will comprise the elected academic staff members, elected non-academic staff members and elected student members. Graduate members must be external and can be elected or appointed, or the process can be a combination of both. Graduates need not form a separate category of membership, but can be appointed either as ministerial or governing body members. The number of graduates must be specified in the constitution rules. Subject to the maximum membership limit and the key principles that apply, the bill allows governing bodies to appoint as many external members of their own choosing as they feel necessary to meet their requirements. Again, the number of governing body appointees decided on must be specified in the constitution rules.

At present each university Act provides for the Minister for Education to appoint six external persons to the university governing body. This bill will give universities the option of having between two and six ministerial appointees on their governing bodies, with the number specified in the constitution rules. While the Minister will retain absolute discretion over his or her own appointments, the governing body of a university may suggest persons to the Minister it considers appropriate for appointment. This is consistent with current processes. The only change to the current arrangements for ministerial appointments is that the Minister will no longer be able to appoint a member of Parliament to the governing body. The

governing body itself, however, may do so in its own category of appointed members if it feels this is desirable or beneficial.

The bill will preserve the current status of the chancellor, vice-chancellor and chair of the university academic board or senate as ex-officio members of the governing body. One change, however, is that the chancellor may now be counted as an external member, depending on the circumstances. It remains possible that a governing body may elect a chancellor who is an internal member of the university. The bill provides limits on the term of office for all elected or appointed members, as specified in clause 10 of schedule 1. In summary, the terms are: for an official member, while the member holds the particular office; for a ministerially appointed member or governing body appointed member, a term not exceeding four years; for an elected staff or student member, a term not exceeding two years as specified in the by-laws; and for an elected graduate member, a term not exceeding four years, as specified in the by-laws.

The bill also continues the following requirements in the current legislation, stemming from the Howard Government's National Governance Protocols: a person must not be appointed or elected to serve more than 12 consecutive years of office unless the governing body specifically resolves to allow it for a particular person and the governing body and the Minister should consider the appropriate balance between experienced and new members when by-laws and appointments are made. Schedule 2 provides for the making of the necessary provisions to support implementation of this bill, including transitional regulations as necessary. When a university governing body decides to adopt the Standard Governing Body Provisions contained in schedule 1, detailed provisions will then need to be developed by Parliamentary Counsel in conjunction with the particular university to enable a smooth transition to the new arrangements. Transitional arrangements would need to include provision for exactly how the existing membership of a governing body is to transition to the new membership arrangements that will apply.

The University Governing Bodies Bill 2011 provides the public universities of New South Wales with much needed flexibility to govern themselves in the way they see fit. The bill helps reduce red tape by allowing for such modernisations as the ability to hold teleconferences and remove chancellors or deputy chancellors without resorting to Government interference. This is consistent with this Government's pledge in the State Plan to reduce red tape by 2021. I understand that universities have been asking for these changes for many years. They need flexibility to operate in the more globalised educational environment in which we find ourselves. They knocked on the ever-revolving door of changing education Ministers over the past few years and no-one answered. In six months, this Government has been able to consult with all New South Wales universities and work with them on a proposal they all assent to and have it presented here for deliberation, something those opposite could not do in 16 long years of Government.

Thanks to the Liberal-Nationals Government, governing bodies will now be better able to meet the challenges of an increasingly competitive global knowledge economy, and a

demand-driven national higher education system. They will have skills to match their responsibilities, and members will be appointed through a customised and transparent procedure. This bill is an affirmation of the commitment of the Liberal-Nationals Government to the autonomy and independence of universities, while also ensuring that appropriate and effective representative governance arrangements are in place. While the representative model of university governance will continue, the amendments will allow universities to rebalance membership structure so that governing bodies can have an effective strategic focus at a time when the external context increasingly requires this. The bill has been drafted in such a way that universities are free to maintain exactly their current arrangements if they consider that those arrangements are serving them well.

I thank the chancellors, vice-chancellors and vice-chancellor committees of all universities. The member for Vaucluse, the Parliamentary Secretary, and I have with them on several occasions prior to the election and we have met with them since the election. The Liberal-Nationals in New South Wales and the vice-chancellor committees have cooperated through open discourse about the future of universities in New South Wales. They have asked for these changes and we have consulted with them. I thank the member for Vaucluse for her enormous amount of work in consulting with the university sector. She has travelled to every university in Sydney and regional New South Wales to make sure that we get this legislation right and that it is what the universities want. This legislation will increase the performance of universities so that they can deliver for the students and the people of New South Wales. I compliment the Parliamentary Secretary on her work on this very complex bill. I commend the bill to the House.