

**Second Reading**

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [3.51 p.m.]: 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.**

The *University Governing Bodies Bill 2011* facilitates amendments to each of the ten Acts establishing the State's public universities.

The amendments will bring the governance arrangements of NSW universities into line with contemporary practice. These amendments will also give effect to the 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 NSW education system and economy. The State needs our universities to be well equipped to meet our growing needs for skills and innovation.

Last year NSW 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 NSW 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 have put this bill before the Parliament.

The Government has consulted widely with the NSW public universities on a model for legislative change to university governance arrangements that lies at the heart of this bill. The Vice-Chancellors' Committee has advised that all 10 of our public universities including their chancellors and governing bodies support the model for legislative change.

**Introduction**

The NSW Coalition Government is committed to supporting a strong, contemporary regulatory framework for NSW 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 proposed in the *Universities Governing Bodies Bill 2011* will chiefly ensure that the governing bodies of NSW 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; 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—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 for some time—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 which allows each university itself to decide whether and when to introduce changes to their governance structure.

The capacity to remunerate members and to dismiss a chancellor or deputy chancellor if the need arises, were key recommendations of the 2009 Legislative Council committee report on the governance of NSW Universities.

Currently, the capacity to dismiss a Chancellor or deputy chancellor for losing the confidence of the governing body is available only to two universities—the University of Sydney and the University of Newcastle—through provisions in their by-laws, rather than in their enabling Acts. This amendment will extend that to all universities, and place this particular power at these two universities in their Acts, rather than their by-laws.

In terms of the capacity to remunerate members, all current NSW university legislation is silent on this issue. The amendment will provide legal certainty in this area, and give universities only the capacity to remunerate—they do not have to implement it 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 bill itself is structured in the following way:

The main body of the bill at section 4 provides that a university governing body can adopt the standard governing body provisions contained in schedule 1. This must be approved by a two-thirds majority of members.

If they do so, these standard provisions will replace the existing governing body provisions in their Act. It is not compulsory for universities to make these 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:

- the total number of members it is to 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.

Section 4 of the bill also sets up the mechanism for effecting these changes. This will be via an order made by the Minister for Education after receiving notice of the governing body resolution. At the appropriate time after the Ministerial Order is made, the university Act will be amended and the existing, replaceable provisions cease to have effect.

Schedule 1 contains the standard governing body provisions that will amend the existing Replaceable Provisions in the 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 governing body decides to opt-in to the 7 standard governing body provisions contained in schedule 1.

Schedule 3 consists of a series of amendments for each of the 10 NSW 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.

I will now deal with the different sections 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.

### **The Main Body of the bill**

There are six clauses in the main body of the bill.

The commencement clause (clause 2) provides that, with the exception of the amendments to the rule-making power in schedule 3, the Act commences on the date of assent.

The definitions at clause 3 indicate the provisions in each of the university Acts 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, providing the mechanism enabling universities to adopt the standard governing body provisions at schedule 1 when they choose to do so.

They will need a two-thirds majority decision by the governing body to opt-in, and 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 does take effect, the standard provisions will take the place of the existing provisions (the "replaceable provisions") in the relevant university Act, and 9 any

necessary consequential changes will also be made to the particular university Act and by-law.

Clause 4 also provides for consequential changes to be made to the rule-making power in each university Act when a ministerial order brings the governing body resolution into effect.

The new governing body arrangements, if adopted, require university rules (called Constitution Rules) to be made to support them, rather than the university by-laws, as at present. The rule-making power therefore needs to change to enable the new approach to operate.

### **The Standard Governing Body Provisions of the bill**

*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, reflecting continuing support for the representative model of governance that underpins the bill as well as the current university Acts.

The schedule 1 provisions set the size-range for the governing body and the 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 (the Chancellor, Vice-Chancellor and President of the Academic Board)
- between 2 and 6 ministerially-appointed members
- at least 1 elected member of the academic staff
- at least 1 elected member of the non-academic staff
- at least 1 elected student who is not employed on a fulltime basis as a staff member of the university
- at least 1 external person who is a graduate of the university, either elected or appointed.
- such number of external persons appointed by the governing body itself 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 majority.

### **Size of Governing Body**

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.

### **Qualifications and Experience of Members**

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 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.

### **Elected Staff and Student Members**

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**

Graduate members must be external and can be either elected, appointed or some combination of both processes. 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.

### **Governing Body-appointed Members**

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.

### **Ministerially-appointed Members**

At present, each university Act provides for the Minister for Education to appoint 6 external persons to the university governing body.

This bill will give universities the option of having between 2 and 6 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 to the Minister persons 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.

### **Official Members**

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.

### **Term of Office**

The bill provides limits on the term of office for all elected or appointed members, as specified in clause 10 of schedule 1. In sum, 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 4 years.
- for an elected staff or student member—a term not exceeding 2 years, as specified in the by-laws.
- for an elected graduate member—a term not exceeding 4 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, that:

- 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.

· the governing body and the Minister should consider the issue of appropriate balance between experienced and new members when by-laws and appointments are made.

### **Savings, Transitional and Other Provisions**

*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, for example, 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.

### **Uniform Amendments to University Acts and By-laws**

Schedule 3 will amend all of the ten university Acts in a uniform way to achieve the objects set out in paragraphs (b), (c) and (d) of the overview of the bill.

### **Conclusion**

The *University Governing Bodies Bill 2011* provides the public universities of NSW 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 20%.

I understand that universities have been asking for changes such as these for years. They need flexibility to operate in the more globalised educational environment we find ourselves in. They knocked on the ever-revolving door of changing education Ministers and no-one answered.

In six months, this Government has been able to consult with all NSW universities and work with them on a proposal they all assent to and have it presented here for deliberation—something those opposite couldn't do in sixteen long years of Government.

Thanks to the Coalition 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 who are appointed through a customised and transparent procedure.

This bill is an affirmation of the NSW Coalition Government's commitment to universities' autonomy and independence, 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 re-balance membership structure so that governing bodies can have an effective strategic focus at a time where 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 commend the bill to the House.