

CONCURRENCE COPY

UNIVERSITY OF NEW ENGLAND (AMENDMENT) BILL, 1984

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the University and University Colleges (Amendment) Bill, 1984.

The objects of this Bill are—

- (a) to specify the investments in which the funds of The University of New England may be invested (Schedule 1);
 - (b) to enable the Council of the University to establish and manage investment pools and to provide for the distribution of the income of those pools (Schedule 1);
 - (c) to validate the establishment and management of investment pools by the University (Schedule 2);
 - (d) to require investment pools referred to in paragraph (c) to be brought into conformity with the provisions of the proposed Act (Schedule 2); and
 - (e) to make other provisions of a minor, consequential or ancillary nature.
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UNIVERSITY OF NEW ENGLAND (AMENDMENT) BILL, 1984

No. , 1984.

A BILL FOR

An Act to amend the University of New England Act, 1953, to make further provision with respect to the investment of money by The University of New England, to enable the establishment and management of investment pools by the University and to validate certain matters.

[MR BEDFORD—28 *February*, 1984.]

University of New England (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "University of New England (Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Schedules.

3. This Act contains the following Schedules:—

15 SCHEDULE 1.—AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND ACT, 1953.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 34, 1953.

4. The University of New England Act, 1953, is amended in the manner
20 set forth in Schedule 1.

Savings, transitional and other provisions.

5. Schedule 2 has effect.

University of New England (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND ACT, 1953.

(1) (a) Section 3 (1), definitions of "class A funds", "class B funds"—

5 After the definition of "By-laws", insert:—

 "class A funds" means—

 (a) private gifts, other than private gifts which may
 be applied without restriction or limitation—

 (i) for any of the purposes of the University; or
10 (ii) for any of the purposes of any faculty, de-
 partment, school or foundation within the
 University;

 (b) grants; and

 (c) student tuition fees.

15 "class B funds" means moneys held by the University which
 are not class A funds.

(b) Section 3 (1), definitions of "grant", "investment pool"—

 After the definition of "Council", insert:—

20 "grant" means money granted to the University by or on
 behalf of the Government of—

 (a) the State of New South Wales; or

 (b) the Commonwealth,

 or any part of that money.

25 "investment pool" means investment pool established by the
 Council under section 24c (1).

(c) Section 3 (1), definitions of "pooled item", "private gift",
"securities"—

 After the definition of "New England University College",
 insert:—

30 "pooled item" means—

 (a) a private gift;

University of New England (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND
ACT, 1953—*continued.*

- 5 (b) a grant;
(c) student tuition fees;
(d) class B funds;
(e) securities; or
(f) real property,
forming part of an investment pool.

10 “private gift” means—

- (a) money, not being a grant, given to the University;
(b) money obtained from the conversion of property
given to the University; and
(c) money obtained from the investment or use of
15 property given to the University.

“securities” means debentures, stocks, shares, bonds and
notes.

(2) Sections 24A–24E—

After section 24, insert:—

20 **Trust instruments apply notwithstanding ss. 24B–24D.**

24A. The terms of—

- (a) in the case of a private gift—any instrument creating a trust
with respect to that private gift;
(b) in the case of a grant—the instrument of grant; and
25 (c) in the case of property, other than money, given to the
University—any instrument creating a trust with respect to
that property,

shall have effect notwithstanding sections 24B, 24C and 24D.

University of New England (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND
ACT, 1953—*continued.***Investment of money.**

5 24B. (1) The Council may invest any class A funds held by the
University in accordance with and subject to the Trustee Act, 1925.

(2) The Council may invest any class B funds held by the
University—

(a) in accordance with and subject to the Trustee Act, 1925;

10 (b) in the same manner as the State Superannuation Board
constituted by the Superannuation Act, 1916, may invest
the State Superannuation Fund established under that Act
or any part of that Fund—

15 (i) under section 5 (1) (a), (b), (b1) and (c1) of
that Act (except that section 5 (1) (c1) of that Act
shall not authorise or enable a loan other than a
loan to a building society specified in Schedule 2
to the Permanent Building Societies Act, 1967);

20 (ii) under section 5A of that Act (except that section
5A (8) (d) of that Act shall not apply to any
investment made by the Council);

25 (iii) with the approval of the Minister and the concur-
rence of the Treasurer, under section 5B of that
Act (except that section 5B (1) (a) and (7) of
that Act shall not apply to any investment made
by the Council) and, subject to subsection (3),
for the purposes of this section, a reference in sec-
tion 5B (4) or (5) of that Act to the Board shall
be read and construed as if it were a reference to
the Council; or

30 (iv) with the approval of the Minister and the concur-
rence of the Treasurer, under section 5C of that
Act, notwithstanding section 5C (3) of that Act
(except that section 5C (4) (j) of that Act, to the
extent to which it authorises investment other than
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University of New England (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND
ACT, 1953—*continued.*

5 by way of subscription of share capital in, deposit with, or loan of money to, a building society specified in Schedule 2 to the Permanent Building Societies Act, 1967, shall not apply to any investment made by the Council); or

(c) in any prescribed manner.

10 (3) A certificate under section 5B (4) of the Superannuation Act, 1916, as applied by subsection (2), shall be furnished to the Council by the Valuer-General upon payment of such fee as is determined by the Valuer-General.

15 (4) The Council may invest any class A funds or class B funds in a form of investment approved by the Minister, with the concurrence of the Treasurer, where the Minister is of the opinion that the University would suffer loss or hardship or be otherwise disadvantaged if the funds were to be invested in accordance with the other provisions of this section.

Investment pools.

20 24c. (1) Subject to subsection (2), the Council may establish and maintain one or more investment pools for the collective investment of property held by the University.

(2) The Council may from time to time—

25 (a) bring into or withdraw from an investment pool the whole or any part of any class A funds or class B funds held by the University; or

(b) bring into an investment pool—

30 (i) securities, other than securities in respect of which the donor has, in an instrument creating a trust in respect of those securities, specified that the

University of New England (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND
ACT, 1953—*continued.*

5 income from those securities shall be applied for a
purpose other than the general purposes of the
University; or

(ii) real property, other than real property in respect
of which the donor has, in an instrument creating
10 a trust in respect of that real property, specified
that the income from that real property shall be
applied for a purpose other than the general
purposes of the University,

or withdraw money to the value attributed equitably to
those securities or that real property by the Council at
15 the date of withdrawal.

(3) Notwithstanding subsections (1) and (2), the Council
shall not bring into or retain in any investment pool the whole or any
part of any class A funds if the investments in which the capital of
the investment pool is invested are not investments made in accord-
20 ance with and subject to the Trustee Act, 1925.

Distribution of income of investment pools.

24D. (1) The Council shall, at least once a year, distribute the
income of an investment pool.

(2) On the distribution of the income of an investment pool
25 under subsection (1), the Council shall, in respect of—

(a) a pooled item being a private gift where the donor of that
private gift has, in an instrument creating a trust in respect
of that private gift—

(i) specified that the income from the investment of
30 that private gift shall be applied for a purpose other
than the general purposes of the University; or

University of New England (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND
ACT, 1953—*continued.*

5 (ii) specified that that private gift shall be applied for a purpose other than the general purposes of the University and that private gift is insufficient, without the addition of the income from the investment of that private gift, to achieve that purpose; and

10 (b) any other pooled item in respect of which the Council is otherwise required to do so,

15 credit the income of that investment pool to the account kept by it in respect of that private gift or other pooled item proportionately according to the value attributed equitably to that private gift or other pooled item by the Council at the date of distribution and the period for which that private gift has formed part of that investment pool since the date of the last preceding distribution of the income of that investment pool.

20 (3) Where the Council distributes the income of an investment pool under subsection (1), it may, in respect of a pooled item, other than a pooled item referred to in subsection (2) (a) or (b), credit the income of that investment pool to any account kept by it.

Nature of private gift, etc., not affected by pooling.

24E. (1) The inclusion in an investment pool of—

25 (a) a pooled item being a private gift, a grant, student tuition fees or class B funds does not affect the identity of that pooled item as a private gift, a grant, student tuition fees or class B funds, as the case may be; and

30 (b) a pooled item does not affect any trust to which that pooled item was subject immediately before its inclusion in that investment pool.

University of New England (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE UNIVERSITY OF NEW ENGLAND
ACT, 1953—*continued.*

- (2) On the withdrawal from an investment pool of—
- 5 (a) a pooled item being a private gift, a grant, student tuition fees or class B funds, that pooled item shall continue to be subject to any trust to which it was subject immediately before its inclusion in that investment pool; and
- 10 (b) money to the value attributed to any securities or real property by the Council under section 24c (2) (b), that money shall be subject to any trust to which those securities were subject immediately before their inclusion in that investment pool or that real property was subject immediately before its inclusion in that investment pool, as the
- 15 case may be.

SCHEDULE 2.

(Sec. 5.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

- 20 1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

Validation—investment pools.

- 25 2. (1) The pooling or collective investment of any moneys, securities or real property by The University of New England before the appointed day, otherwise than in accordance with the terms of any instrument creating a trust with respect to those moneys, those securities or that real property, is hereby validated.

- 30 (2) A pool for the collective investment of any moneys, securities or real property established by The University of New England and in existence immediately before the appointed day shall, on and from that day, be deemed, subject to the University of New England Act, 1953, as amended by this Act, to be an investment pool lawfully constituted by the Council of that University under section 24c (1) of that Act, as so amended.

University of New England (Amendment).

SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Reconstitution of investment pools.**

5 3. (1) In this clause, “grant” and “private gift” have the meanings attributed to them respectively in section 3 (1) of the University of New England Act, 1953, as amended by this Act.

10 (2) Where a pool referred to in clause 2 (2) contains the whole or any part of a private gift, other than a private gift which may be applied without restriction or limitation for any of the purposes of The University of New England, or the whole or any part of a grant and the whole or any part of the capital of that pool is invested in investments which are not made in accordance with and subject to the Trustee Act, 1925, then, except to the extent to which the investments in which the capital of that pool is invested are authorised or permitted under the terms of—

15 (a) in the case of that private gift—any instrument creating a trust with respect to that private gift; or

(b) in the case of that grant—the instrument of grant,

the Council of The University of New England shall, as soon as practicable after the appointed day, withdraw the whole or such part of that private gift or that grant as forms part of the capital of that pool from that pool.

20 (3) Where a pool referred to in clause 2 (2) contains any student tuition fees and the whole or any part of the capital of that pool is invested in investments which are not made in accordance with and subject to the Trustee Act, 1925, the Council of The University of New England shall, as soon as practicable after the appointed day, withdraw those student tuition fees from that pool.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984