

FIRST PRINT

**UNIVERSITY AND UNIVERSITY COLLEGES
(AMENDMENT) BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Chifley University Interim Council Bill 1987.

The object of this Bill is to amend the University and University Colleges Act 1900—

- (a) to enable the constitution of Chifley University College as a college of the University of Sydney; and
- (b) to authorise the variation of certain trusts of which the University of Sydney is trustee.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, apart from the amendments relating to the establishment of Chifley University College, the proposed Act will commence on the date of assent. The amendments relating to the establishment of the College will commence on the date of assent to the proposed Chifley University Interim Council Act 1987.

University and University Colleges (Amendment) 1987

Schedule 1 (1) inserts a new Part IVA into the Principal Act, of which the main provisions are as follows:

Proposed section 29C allows a trust for the award of a prize, scholarship or exhibition to be varied so as to increase the value of the prize, scholarship or exhibition. A variation under this provision may be made by the Minister at the request of the trustee (the University of Sydney), if the Minister is satisfied that the variation is just and equitable. The University may request such a variation when it is of the opinion that the donor of the trust, at the time the trust was created, had in mind a prize, scholarship or exhibition which was of more value than its current value (affected by inflation).

Proposed section 29D allows a trust for a charitable or other purpose to be varied so as to overcome some difficulty in its administration. Examples of the kinds of difficulty now attending certain trusts are—

- (a) the trust is for a purpose which has by now been achieved;
- (b) the conditions of eligibility as a beneficiary of the trust are so strict that, even after many years, there has never been an eligible beneficiary.

Variations under this provision may be made by the Minister at the request of the University, if the Minister is satisfied that the variation is just and equitable and if the Attorney General concurs with the Minister's decision. In determining whether to make the variation, regard is to be had to the extent to which the trust must be varied to overcome the difficulty attending it, and to the general intentions of the donor.

Schedule 1 (2) amends section 44 of the Principal Act by way of statute law revision.

Schedule 1 (3) inserts a new Part VIIA into the Principal Act, of which the main provisions are as follows:

Proposed section 46B empowers the Senate of the University to establish Chifley University College.

Proposed section 46C makes the University responsible for the management and government of the College, except to the extent that the proposed Chifley University Interim Council Act 1987 otherwise provides.

Proposed section 46D provides for the University to accept gifts from persons, whether by testamentary disposition or otherwise, for the benefit of the College.

Proposed section 46E allows the Senate of the University to make by-laws in aid of the proposed new Part.

Proposed section 46F requires the University, in its annual report to Parliament, to report on the progress of the College towards independence as an autonomous university.

UNIVERSITY AND UNIVERSITY COLLEGES (AMENDMENT) BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 22, 1900

SCHEDULE 1—AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900

**UNIVERSITY AND UNIVERSITY COLLEGES
(AMENDMENT) BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the University and University Colleges Act 1900 to enable the constitution of Chifley University College as a college of the University of Sydney and to authorise the variation of certain trusts of which the University of Sydney is trustee; and for other purposes.

University and University Colleges (Amendment) 1987

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 and University Colleges (Amendment) Act 1987".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence
10 on the date of assent to this Act.

(2) Schedule 1 (3), and section 3 in its application to that provision, shall commence or be deemed to have commenced, as the case requires, on the date of assent to the Chifley University Interim Council Act 1987.

Amendment of Act No. 22, 1900

15 3. The University and University Colleges Act 1900 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
20 COLLEGES ACT 1900

(1) Part IVA—

After Part IV, insert:

PART IVA

Variation of trusts

25 Interpretation

29A. In this Part—

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

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

“prize” includes a scholarship or exhibition.

Trusts to which this Part applies

29B. This Part applies to a trust, whether created before, on or after the commencement of the University and University Colleges (Amendment) Act 1987—

(a) by which any real or personal property is held—

(i) by the University upon trust for a particular purpose; or

(ii) by any person upon 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 Part, be varied without the order of a court.

Variation of amount of prize, scholarship or exhibition

29C. (1) If—

(a) by the terms of a trust for the award from time to time, out of the income from the trust property or its proceeds, of a prize, the prize to be awarded is a fixed amount of money; and

(b) in the opinion of the University (expressed by resolution of the Senate), the value of the amount so fixed 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,

the University may request the Minister to effect a variation, to an extent approved by the Senate, of the amount of the prize.

(2) The Minister, if satisfied that it is just and equitable to do so, may determine to vary the amount of the prize in accordance with the University’s request.

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

(3) Upon delivery to the University of an instrument in writing signed by the Minister and specifying such a variation, the trust concerned is varied accordingly.

Variation of terms of trust

5 29D. (1) If—

(a) by the terms of a trust, any property is held—

(i) upon trust for a charitable purpose; or

(ii) upon trust for a purpose of the University other than its general purposes; and

10 (b) in the opinion of the University (expressed by resolution of the Senate), it is impossible or inexpedient to carry out or observe the terms of the trust, whether as to its purpose or any other of its terms,

15 the University may request the Minister to effect a variation, in a manner approved by the Senate, of the terms of the trust.

(2) The Minister, if satisfied that it is just and equitable to do so, and with the concurrence of the Attorney General, may determine to vary the terms of the trust concerned in accordance with the University's request.

20 (3) In the making of any such determination, regard shall be had—

(a) 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; and

25 (b) to what appear to have been the intentions of the donor in creating the trust.

(4) Upon delivery to the University 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.

University and University Colleges (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

Further variation

29E. A trust that has been varied in accordance with this Part may in like manner be further varied from time to time.

(2) Section 44 (**Senate to appoint officers etc. and manage property**)

5 Section 44 (1)—

Omit “subsection (1) of section 14 shall extend to and in respect of”, insert instead “section 14 shall extend to and in respect of the employment of”.

(3) Part VIIA—

10 After Part VII, insert:

PART VIIA

Chifley University College

Interpretation

46A. In this Part—

15 “College” means Chifley University College to be established under this Part;

“Interim Council” means the Chifley University Interim Council constituted under the Chifley University Interim Council Act 1987.

20 **Power to establish the College**

46B. The Senate may, with the approval of the Minister, establish and maintain a college, to be known as Chifley University College, at a place appointed by the Minister.

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued***Management of the College and its property**

46C. (1) Except as otherwise provided by the Chifley University Interim Council Act 1987—

5 (a) the Senate shall have the entire management of and superintendence over the affairs and concerns of the College and any property held upon trust for the purposes of the College; and

10 (b) in all cases not provided for by this Act the Senate may, in relation to any such property, act in such manner as appears to it to be best calculated to promote the purposes of the College.

(2) The Senate may, in consultation with the Interim Council—

(a) make provision for classes and courses of instruction at the College in such subjects as it may think fit; and

15 (b) make provision for the conduct of examinations at the College.

(3) The Senate may delegate to the Interim Council any of the powers, authorities, duties and functions conferred or imposed upon the Senate by this section.

Acquisition of property

20 46D. (1) The University shall have power—

(a) to acquire by gift, devise or bequest any property upon trust to apply the property, or the proceeds of or income from the property, for the benefit of the College; and

25 (b) to agree to the conditions of any such gift, devise or bequest.

*University and University Colleges (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

(2) If, before the establishment of the College, any property, real or personal, has been vested in or acquired by any person upon trust for the purposes for which the College is established—

- 5 (a) the person may, when the College is established, convey or transfer the property to the University upon trust to apply the property, or the proceeds of or income from the property, for the benefit of the College; and
- 10 (b) the acceptance of the property by the University shall be a complete discharge to the person so conveying or transferring it.

By-laws

46E. (1) The Senate may make by-laws relating to—

- 15 (a) the discipline of the College;
- (b) the classes and courses of instruction provided at the College and the conduct of examinations at the College;
- (c) the delegation of powers, authorities, duties and functions to the Interim Council;
- (d) any matter which is necessary or convenient to be prescribed by by-laws for carrying this Part into effect.

20 (2) Every such by-law—

- (a) shall be sealed with the seal of the University;
- (b) shall be transmitted for the consideration and approval of the Governor; and
- (c) when approved, shall be countersigned by the Governor,
- 25 and being duly sealed and countersigned, shall be of full force and effect.

(3) Until the commencement of the Interpretation Act 1987, section 41 of the Interpretation Act 1897 applies in respect of a by-law made under this section as if this Act had been passed after

30 the commencement of the Interpretation (Amendment) Act 1969.

SCHEDULE 1—*continued*

AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

Annual report on progress of College

46F. The University shall include, in that part of its annual report to Parliament which concerns the College, a report on the progress of the College towards independence as an autonomous university.

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**UNIVERSITY AND UNIVERSITY COLLEGES
(AMENDMENT) ACT 1987 No. 115**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 22, 1900

**SCHEDULE 1—AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900**



UNIVERSITY AND UNIVERSITY COLLEGES (AMENDMENT) ACT

1987 No. 115

University and University Colleges (Amendment) 1987

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:

Short title

1. This Act may be cited as the "University and University Colleges (Amendment) Act 1987."

Commencement

2. (1) Except as provided in this Act, this Act shall commence on the date of assent to this Act.

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(2) Schedule 1 (3) and section 3 in its application to that provision, shall commence or be deemed to have commenced, as the case requires, on the date of assent to the Chiefly University Institution Council Act 1987.

3. The University and University Colleges Act 1900 is amended in the manner set forth in Schedule 1.



SCHEDULE 1

(Sec 3)

AMENDMENTS TO UNIVERSITY AND UNIVERSITY COLLEGES ACT 1900

Act No. 115, 1987

An Act to amend the University and University Colleges Act 1900 to enable the constitution of Chiefly University College as a college of the University of Sydney and to authorise the variation of certain trusts of which the University of Sydney is trustee; and for other purposes. [Assented to 16 June 1987]

Variation of trusts

Interpretation

29A. In this Part—

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

University and University Colleges (Amendment) 1987

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:

Short title

1. This Act may be cited as the "University and University Colleges (Amendment) Act 1987".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (3), and section 3 in its application to that provision, shall commence or be deemed to have commenced, as the case requires, on the date of assent to the Chifley University Interim Council Act 1987.

Amendment of Act No. 22, 1900

3. The University and University Colleges Act 1900 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

**AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900**

(1) Part IV_A—

After Part IV, insert:

PART IV_A

Variation of trusts

Interpretation

29A. In this Part—

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

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

“prize” includes a scholarship or exhibition.

Trusts to which this Part applies

29B. This Part applies to a trust, whether created before, on or after the commencement of the University and University Colleges (Amendment) Act 1987—

- (a) by which any real or personal property is held—
 - (i) by the University upon trust for a particular purpose; or
 - (ii) by any person upon 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 Part, be varied without the order of a court.

Variation of amount of prize, scholarship or exhibition

29C. (1) If—

- (a) by the terms of a trust for the award from time to time, out of the income from the trust property or its proceeds, of a prize, the prize to be awarded is a fixed amount of money; and
- (b) in the opinion of the University (expressed by resolution of the Senate), the value of the amount so fixed 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,

the University may request the Minister to effect a variation, to an extent approved by the Senate, of the amount of the prize.

(2) The Minister, if satisfied that it is just and equitable to do so, may determine to vary the amount of the prize in accordance with the University's request.

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

(3) Upon delivery to the University of an instrument in writing signed by the Minister and specifying such a variation, the trust concerned is varied accordingly.

Variation of terms of trust

29D. (1) If—

(a) by the terms of a trust, any property is held—

(i) upon trust for a charitable purpose; or

(ii) upon trust for a purpose of the University other than its general purposes; and

(b) in the opinion of the University (expressed by resolution of the Senate), it is impossible or inexpedient to carry out or observe the terms of the trust, whether as to its purpose or any other of its terms,

the University may request the Minister to effect a variation, in a manner approved by the Senate, of the terms of the trust.

(2) The Minister, if satisfied that it is just and equitable to do so, and with the concurrence of the Attorney General, may determine to vary the terms of the trust concerned in accordance with the University's request.

(3) In the making of any such determination, regard shall be had—

(a) 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; and

(b) to what appear to have been the intentions of the donor in creating the trust.

(4) Upon delivery to the University 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.

University and University Colleges (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

Further variation

29E. A trust that has been varied in accordance with this Part may in like manner be further varied from time to time.

(2) Section 44 (**Senate to appoint officers etc. and manage property**)

Section 44 (1)—

Omit “subsection (1) of section 14 shall extend to and in respect of”, insert instead “section 14 shall extend to and in respect of the employment of”.

(3) Part VIIA—

After Part VII, insert:

PART VIIA

Chifley University College

Interpretation

46A. In this Part—

“College” means Chifley University College to be established under this Part;

“Interim Council” means the Chifley University Interim Council constituted under the Chifley University Interim Council Act 1987.

Power to establish the College

46B. The Senate may, with the approval of the Minister, establish and maintain a college, to be known as Chifley University College, at a place appointed by the Minister.

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued***Management of the College and its property**

46C. (1) Except as otherwise provided by the Chifley University Interim Council Act 1987—

- (a) the Senate shall have the entire management of and superintendence over the affairs and concerns of the College and any property held upon trust for the purposes of the College; and
- (b) in all cases not provided for by this Act the Senate may, in relation to any such property, act in such manner as appears to it to be best calculated to promote the purposes of the College.

(2) The Senate may, in consultation with the Interim Council—

- (a) make provision for classes and courses of instruction at the College in such subjects as it may think fit; and
- (b) make provision for the conduct of examinations at the College.

(3) The Senate may delegate to the Interim Council any of the powers, authorities, duties and functions conferred or imposed upon the Senate by this section.

Acquisition of property

46D. (1) The University shall have power—

- (a) to acquire by gift, devise or bequest any property upon trust to apply the property, or the proceeds of or income from the property, for the benefit of the College; and
- (b) to agree to the conditions of any such gift, devise or bequest.

SCHEDULE 1—*continued*AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—*continued*

(2) If, before the establishment of the College, any property, real or personal, has been vested in or acquired by any person upon trust for the purposes for which the College is established—

- (a) the person may, when the College is established, convey or transfer the property to the University upon trust to apply the property, or the proceeds of or income from the property, for the benefit of the College; and
- (b) the acceptance of the property by the University shall be a complete discharge to the person so conveying or transferring it.

By-laws

46E. (1) The Senate may make by-laws relating to—

- (a) the discipline of the College;
- (b) the classes and courses of instruction provided at the College and the conduct of examinations at the College;
- (c) the delegation of powers, authorities, duties and functions to the Interim Council;
- (d) any matter which is necessary or convenient to be prescribed by by-laws for carrying this Part into effect.

(2) Every such by-law—

- (a) shall be sealed with the seal of the University;
- (b) shall be transmitted for the consideration and approval of the Governor; and
- (c) when approved, shall be countersigned by the Governor,

and being duly sealed and countersigned, shall be of full force and effect.

(3) Until the commencement of the Interpretation Act 1987, section 41 of the Interpretation Act 1897 applies in respect of a by-law made under this section as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

University and University Colleges (Amendment) 1987

SCHEDULE 1—continued
AMENDMENTS TO THE UNIVERSITY AND UNIVERSITY
COLLEGES ACT 1900—continued

Annual report on progress of College

46F. The University shall include, in that part of its annual report to Parliament which concerns the College, a report on the progress of the College towards independence as an autonomous university.

(b) the acceptance of the property by the University shall be a complete discharge to the person so conveying or transferring it.

By-laws

(1) The Senate may make by-laws relating to—

- (a) the discipline of the College;
- (b) the classes and courses of instruction provided at the College and the conduct of examinations at the College;
- (c) the delegation of powers, authorities, duties and functions to the Internal Council;
- (d) any matter which is necessary or convenient to be prescribed by by-laws for carrying this Part into effect.

(2) Every such by-law—

- (a) shall be sealed with the seal of the University;
- (b) shall be transmitted for the consideration and approval of the Government and
- (c) when approved, shall be countersigned by the Governor and being duly sealed and countersigned, shall be of full force and effect.

(3) Until the commencement of the Interpretation Act 1987, section 4 of the Interpretation Act 1957 applies in respect of a by-law made under this section as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.



