

UNIVERSITY OF NEW SOUTH WALES ACT 1989
No. 125

NEW SOUTH WALES



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UNIVERSITY OF NEW SOUTH WALES ACT 1989
No. 125

NEW SOUTH WALES



Act No. 125, 1989

An Act with respect to the constitution and functions of the University of New South Wales; to repeal the University of New South Wales Act 1968; and for other purposes. [Assented to 30 August 1989]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the University of New South Wales Act 1989.

Commencement

2. (1) This Act (section 31 (2) and (3) excepted) commences on a day or days to be appointed by proclamation.

(2) The provisions of section 31 (2) and (3) commence on the date of assent to this Act.

Definitions

3. (1) In this Act:

"Council" means the Council of the University;

"University" means the University of New South Wales established by this Act.

(2) In this Act, a reference to a graduate of the University is a reference to a person who is the recipient of a degree or diploma, or of such other award or certificate as may be prescribed by the by-laws, conferred or awarded:

(a) by the University;

(b) by or on behalf of any former institution that has, pursuant to this Act or to the Higher Education (Amalgamation) Act 1989 or otherwise, become a part of the University; or

(c) by any predecessor of any such institution.

(3) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2 - CONSTITUTION AND FUNCTIONS OF THE UNIVERSITY

Establishment of University

4. A University, consisting of:
- (a) a Council;
 - (b) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe; and
 - (c) the graduates and students of the University,
- is established by this Act.

Incorporation of University

5. The University is a body corporate under the name of the University of New South Wales.

Functions of University

6. (1) The functions of the University (within the limits of its resources) include:
- (a) the provision of educational and research facilities of university standard;
 - (b) aiding, by research and other suitable means, the advancement, development and practical application of science to industry and commerce;
 - (c) the provision of instruction and the carrying out of research in the disciplines of humane studies and medicine and in such other disciplines as the Council may from time to time determine; and
 - (d) the conferring of the degrees of Bachelor, Master and Doctor and the awarding of diplomas and other certificates.
- (2) The University has such other functions as are conferred or imposed on it by or under this or any other Act.

Facilities to be provided for students

7. The University may, for the purpose of exercising its functions, provide such facilities for its students as it considers desirable.

PART 3 - THE COUNCIL, AUTHORITIES AND OFFICERS OF THE UNIVERSITY

The Council

8. (1) There is to be a Council of the University.

(2) The Council is the governing authority of the University and has the functions conferred or imposed on it by or under this Act.

Constitution of Council

9. (1) The Council is to consist of:

- (a) parliamentary members;
- (b) official members;
- (c) appointed members; and
- (d) elected members.

(2) The parliamentary members comprise:

- (a) one Member of the Legislative Council elected by that Council:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each periodic Council election within the meaning of section 3 of the Constitution Act 1902; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant; and
- (b) one Member of the Legislative Assembly elected by that Assembly:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each general election of Members of the Legislative Assembly; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant.

(3) The official members comprise:

- (a) the Chancellor (if the Chancellor is not otherwise a member of the Council);

- (b) the Vice-Chancellor; and
- (c) the person for the time being holding the office of:
 - (i) President of the Academic Board (if that person is not the Vice-Chancellor); or
 - (ii) Deputy President of the Academic Board (if the President is the Vice-Chancellor).
- (4) The appointed members comprise 4 persons appointed by the Minister.
- (5) The elected members comprise:
 - (a) 4 persons:
 - (i) who are members of the academic staff of the University;
 - (ii) who have such qualifications as may be prescribed by the by-laws; and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws;
 - (b) one person:
 - (i) who is a member of the non-academic staff of the University;
 - (ii) who has such qualifications as may be prescribed by the by-laws; and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws;
 - (c) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University;
 - (ii) who has such qualifications as may be prescribed by the by-laws; and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws;
 - (d) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University;

- (ii) who has such qualifications as may be prescribed by the by-laws; and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws; and
- (e) 4 persons:
- (i) who are graduates of the University (but who are not members of the academic or non-academic staff of the University having the qualifications referred to in paragraph (a) (ii) or (b) (ii) or undergraduate or postgraduate students of the University having the qualifications referred to in paragraph (c) (ii) or (d) (ii));
 - (ii) who have such qualifications as may be prescribed by the by-laws; and
 - (iii) who are elected by graduates of the University in the manner prescribed by the by-laws.

(6) The Council may appoint any other person to be a member of the Council and the person, on being appointed, is to be taken to be an appointed member of the Council in addition to the members appointed under subsection (4).

(7) No more than one person may hold office at any one time as an appointed member under subsection (6).

(8) Schedule 1 has effect in relation to the members and procedure of the Council.

Chancellor

10. (1) Whenever a vacancy in the office of Chancellor occurs, the Council is to elect a person (whether or not a member of the Council) to be Chancellor of the University.

(2) The Chancellor, unless he or she sooner resigns as Chancellor or ceases to be a member of the Council, holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.

(3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

Deputy Chancellor

11. (1) Whenever a vacancy in the office of Deputy Chancellor occurs, the Council must elect one of its members to be Deputy Chancellor of the University.

(2) The Deputy Chancellor, unless he or she sooner resigns as Deputy Chancellor or ceases to be a member of the Council, holds office for 2 years from the date of election and on such conditions as may be prescribed by the by-laws.

(3) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, the Deputy Chancellor has all the functions of the Chancellor.

Vice-Chancellor

12. (1) Whenever a vacancy in the office of Vice-Chancellor occurs, the Council must appoint a person (whether or not a member of the Council) to be Vice-Chancellor of the University.

(2) The Vice-Chancellor holds office for such period, and on such conditions, as the Council determines.

(3) The Vice-Chancellor is the principal executive officer of the University and has the functions conferred or imposed on the Vice-Chancellor by or under this or any other Act.

Visitor

13. The Governor is the Visitor of the University with full authority and jurisdiction to exercise all functions pertaining to the office of Visitor.

Academic Board

14. (1) There is to be an Academic Board of the University, consisting of:

- (a) the Vice-Chancellor; and
- (b) such other persons as the Council may, in accordance with the by-laws, determine.

(2) Subject to subsection (1), the constitution and functions of the Academic Board are to be as prescribed by the by-laws.

PART 4 - FUNCTIONS OF COUNCIL

Division 1 - General

Powers of Council

15. (1) The Council:

- (a) may provide such courses, and may confer such degrees and award such diplomas and other certificates, as it thinks fit;
- (b) may appoint and terminate the appointment of academic and other staff of the University;
- (c) has the control and management of the affairs and concerns of the University and may act in all matters concerning the University in such manner as appears to it to be best calculated to promote the objects and interests of the University;
- (d) may borrow money for the purpose of exercising any of its functions, for the renewal of loans or for the discharge or partial discharge of any indebtedness to the Treasurer or to any bank, 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;
- (e) may invest any funds belonging to or vested in the University;
- (f) may establish or participate in such trusts, companies or other incorporated bodies as it considers appropriate to promote the objects and interests of the University;
- (g) may engage in the commercial development of any discovery or invention, or of any intellectual property, in which the University has a right or interest;
- (h) may establish and maintain branches and colleges of the University, within the University and elsewhere;
- (i) may make loans and grants to students; and
- (j) may impose fees, charges and fines.

(2) The powers of the Council under this section are to be exercised subject to the by-laws.

(3) Schedule 2 has effect in relation to the investment of funds by the Council.

Delegation by Council

16. The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its functions (except this power of delegation) to any member or committee of the Council or to any authority or officer of the University or to any other person or body prescribed by the by-laws.

Division 2 - Property

Powers of Council relating to property

17. (1) The Council:

- (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise; and
- (b) has the control and management of all property at any time vested in or acquired by the University and may, subject to this section, dispose of property in the name and on behalf of the University.

(2) The Council is not, except with the approval of the Minister, to alienate, mortgage, charge or demise any lands of the University.

(3) Notwithstanding subsection (2), the Council may, without the approval of the Minister, lease any lands of the University if:

- (a) the term of the lease does not exceed 21 years; and
- (b) (except where the lessee is a residential college affiliated with the University) there is reserved for the whole of the term the highest rent that can reasonably be obtained.

(4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease:

- (a) is to be for a term not exceeding 99 years; and
- (b) is to be at a nominal rent; and
- (c) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.

(5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

Powers of Council over certain property vested in Crown

18. (1) Where any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Council has the control and management of that property and is responsible for its maintenance.

(2) Nothing in subsection (1) enables the Council to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).

(3) Notwithstanding subsection (2), the Council may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.

(4) Such a lease:

(a) is to be for a term not exceeding 21 years; and

(b) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.

(5) The Council is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

Acquisition of land

19. (1) For the purposes of this Act, the Governor may, on the recommendation of the Minister, resume or appropriate any land under Division 1 of Part 5 of the Public Works Act 1912.

(2) The Minister is not to make a recommendation for the purposes of this section unless satisfied that adequate provision has been or will be made for the payment by the University of compensation for the resumption or appropriation and of all necessary charges and expenses incidental to the resumption or appropriation.

(3) A resumption or appropriation effected pursuant to this section is to be taken to be for an authorised work within the meaning of the Public Works Act 1912 and the Minister is, in relation to that authorised work, to be taken to be the Constructing Authority within the meaning of that Act.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not, but section 38 of that Act does, apply in relation to a resumption or appropriation under this section.

Grant or transfer of certain land to University

20. (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:

- (a) if it is vested in the Crown - be transferred to the University subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister for Natural Resources thinks fit; or
- (b) if it is vested in a Minister of the Crown - be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit.

(2) A conveyance, transfer or other instrument executed for the purposes of this section:

- (a) is not liable to stamp duty under the Stamp Duties Act 1920; and
- (b) may be registered under any Act without fee.

PART 5 - GENERAL

Advance by Treasurer

21. The Treasurer may, with the approval of the Governor, advance to the Council money for the temporary accommodation of the University on such terms and conditions in relation to repayment and interest as may be agreed upon.

Financial year

22. The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b) - the year commencing on 1 January; or
- (b) the period prescribed by the by-laws for the purposes of this section.

No religious test or political discrimination

23. A person must not, because of his or her religious or political affiliations, views or beliefs, be denied admission as a student of the University or be ineligible to hold office in, to graduate from or to enjoy any benefit, advantage or privilege of the University.

Exemption from membership of body corporate

24. A student or graduate of the University or a member of staff of the University is entitled to be exempted by the Council, on grounds of conscience, from membership of the body corporate of the University.

Re-appointment or re-election

25. Nothing in this Act prevents any person from being re-appointed or re-elected to any office under this Act if the person is eligible and otherwise qualified to hold that office.

Seal of University

26. The seal of the University is to be kept in such custody as the Council may direct and is only to be affixed to a document pursuant to a resolution of the Council.

By-laws

27. (1) The Council may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the management, good government and discipline of the University;
- (b) the method of election of members of the Council (other than the parliamentary members) who are to be elected;
- (c) the manner and time of convening, holding and adjourning the meetings of the Council or Academic Board;
- (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Board;
- (e) the functions of the presiding member of the Council or Academic Board;
- (f) the conduct and record of business of the Council or Academic Board;
- (g) the appointment of committees of the Council or Academic Board;
- (h) the quorum and functions of committees of the Council or Academic Board;

- (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor;
- (j) the tenure of office, stipend and functions of the Vice-Chancellor;
- (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise and the designation of students of the University as undergraduate students, postgraduate students or otherwise;
- (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University;
- (m) admission to, enrolment in and exclusion from courses of studies;
- (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of:
 - (i) entrance to the University;
 - (ii) tuition;
 - (iii) lectures and classes;
 - (iv) examinations;
 - (v) residence;
 - (vi) the conferring of degrees and the awarding of diplomas and other certificates;
 - (vii) the provision of amenities and services, whether or not of an academic nature; and
 - (viii) an organisation of students or of students and other persons;
- (o) the exemption from, or deferment of, payment of fees and charges, including fines;
- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements;
- (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours;
- (r) the assessments for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes;

- (s) the admission of students and former students of other universities and institutions of higher education to any status within the University or the granting to graduates of such universities or institutions, or other persons, of degrees or diplomas without examination;
 - (t) the establishment and conduct of places of accommodation for students (including residential colleges and halls of residence within the University) and the affiliation of residential colleges;
 - (u) the affiliation with the University of any educational or research establishment;
 - (v) the creation of faculties, schools, departments, centres or other entities within the University;
 - (w) the provision of schemes of superannuation for the officers and employees of the University;
 - (x) the form and use of academic costume;
 - (y) the form and use of an emblem of the University or of any body within or associated with the University; and
 - (z) the use of the seal of the University.
- (2) A by-law has no effect unless it has been approved by the Governor.

Rules

28. (1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for regulating, or providing for the regulation of, any specified matter with respect to which by-laws may be made.

(2) Any such rule:

- (a) has the same force and effect as a by-law; and
- (b) may, from time to time, be amended or repealed by the Council or by the authority or officer of the University empowered to make such a rule.

Recovery of charges, fees and other money

29. Any charge, fee or money due to the University under this Act may be recovered as a debt in any court of competent jurisdiction.

Repeal etc.

30. (1) The University of New South Wales Act 1968, and the University of New South Wales Regulations 1969, are repealed.

(2) The Council of the University of New South Wales, as constituted immediately before the repeal of the University of New South Wales Act 1968, is dissolved.

(3) The persons holding office as members of the Council and Deputy Chancellor immediately before the repeal of the University of New South Wales Act 1968 cease to hold office as such on that repeal.

Savings and transitional provisions

31. (1) Schedule 3 has effect.

(2) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if:

(a) the whole of this Act; and

(b) sections 14 and 22 of the Higher Education (Amalgamation) Act 1989,

were in force.

(3) A member who is elected or appointed to the Council under this section does not assume office before the commencement of section 9.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL**

(Sec. 9)

Term of office

1. Subject to this Act, a member of the Council holds office:

(a) in the case of a parliamentary member, until a member of the House of Parliament that elected the member is elected as a replacement;

(b) in the case of an official member, while the member holds the office by virtue of which he or she is a member;

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

- (c) in the case of an appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment;
- (d) in the case of an elected member referred to in section 9 (5) (a), (b), (c) or (d), for such term (not exceeding 2 years) as may be prescribed by the by-laws; and
- (e) in the case of an elected member referred to in section 9 (5) (e), for such term (not exceeding 4 years) as may be prescribed by the by-laws.

Vacation of office

2. The office of a member of the Council becomes vacant if the member:

- (a) dies;
- (b) declines to act;
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of the parliamentary member who is a Member of the Legislative Council, to the President of the Legislative Council;
 - (ii) in the case of the parliamentary member who is a Member of the Legislative Assembly, to the Speaker of the Legislative Assembly;
 - (iii) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), to the Minister; or
 - (iv) in the case of an elected member or a member appointed by the Council under section 9 (6), to the Vice-Chancellor;
- (d) in the case of an appointed or elected member, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her remuneration for their benefit;
- (e) in the case of an appointed or elected member, becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

- (f) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable;
- (g) in the case of an appointed or elected member, is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence;
- (h) in the case of the parliamentary member elected by the Legislative Council:
 - (i) ceases to be a Member of that Council otherwise than by reason of section 22B (1) (c) of the Constitution Act 1902; or
 - (ii) ceases to be a Member of that Council by reason of section 22B (1) (c) of that Act and does not become a candidate at the next periodic Council election within the meaning of section 3 of that Act or, as the case may be, becomes a candidate but is not elected;
- (i) in the case of the parliamentary member elected by the Legislative Assembly:
 - (i) ceases to be a Member of that Assembly otherwise than by reason of its dissolution or its expiration by effluxion of time; or
 - (ii) ceases to be a Member of that Assembly by reason of its dissolution or its expiration by effluxion of time and does not become a candidate at the next general election of Members of that Assembly or, as the case may be, becomes a candidate but is not elected;
- (j) in the case of an elected member, ceases to be qualified for election;

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

- (k) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), is removed from office by the Minister; or
- (l) in the case of a member appointed by the Council under section 9 (6), is removed from office by the Council.

Filling of vacancy in office of member

3. (1) If the office of an appointed or elected member of the Council becomes vacant, a person is, subject to this Act and the by-laws, to be appointed or elected to fill the vacancy.

(2) The by-laws may provide that, in such circumstances as may be prescribed, a person is to be appointed or elected (otherwise than to fill the office of a parliamentary member) in such manner as may be prescribed instead of in the manner provided for by this Act.

Committees of the Council

4. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Liability of Council members and others

5. No matter or thing done by:

- (a) the University, the Council or a member of the Council; or
- (b) any person acting under the direction of the University or the Council,

if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member of the Council or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

General procedure

6. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the by-laws, to be as determined by the Council.

Presiding member

7. (1) The Chancellor is to preside at all meetings of the Council at which the Chancellor is present.

(2) At any meeting of the Council at which the Chancellor is not present, the Deputy Chancellor is to preside and, in the absence of both the Chancellor and the Deputy Chancellor, a member elected by and from the members present is to preside.

(3) Except as provided by subclause (4), at the meetings of a committee constituted by the Council a member appointed by the Council (or, if no member is so appointed, elected by and from the members present) is to preside.

(4) At any meeting of a committee constituted by the Council at which the Chancellor is present, the Chancellor is entitled, if he or she so desires, to preside at that meeting.

Quorum

8. At any meeting of the Council, a majority of the total number of members for the time being of the Council constitutes a quorum.

Voting

9. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

SCHEDULE 2 - POWERS OF INVESTMENT

(Sec. 15)

Definitions

1. In this Schedule:

"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
 - (ii) for any of the purposes of any faculty, department, school or foundation within the University;
- (b) grants; or
- (c) student tuition fees;

"class B funds" means money held by the University which is not class A funds;

"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;

"investment pool" means an investment pool established by the Council under this Schedule;

"pooled item" means:

- (a) a private gift;
- (b) a grant;
- (c) student tuition fees;
- (d) class B funds;
- (e) securities; or
- (f) real property,

forming part of an investment pool;

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

"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 property given to the University;

"securities" means debentures, stocks, shares, bonds and notes.

Terms of trust to prevail

2. 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
- (c) in the case of property, other than money, given to the University - any instrument creating a trust with respect to that property,

have effect despite clauses 3, 4 and 5.

Investment of money

3. The Council may invest any class A funds or class B funds held by the University:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) at any time at which the Public Authorities (Financial Arrangements) Act 1987 does not apply to the Council so as to authorise any such investment:
 - (i) in accordance with and subject to the Trustee Act 1925; or
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

Investment pools

4. (1) 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:

(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:

(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 income from those securities is to 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 a trust in respect of that real property, specified that the income from that real property is to 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 the date of withdrawal.

(3) The Council must 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 accordance with and subject to the Trustee Act 1925.

Distribution of income of investment pools

5. (1) The Council must, at least once a year, distribute the income of an investment pool.

(2) On the distribution of the income of an investment pool, the Council must, in respect of:

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

- (a) a pooled item being a private gift where the donor of the private gift has, in an instrument creating a trust in respect of the private gift:
 - (i) specified that the income from the investment of the private gift is to be applied for a purpose other than the general purposes of the University; or
 - (ii) specified that the private gift is to be applied for a purpose other than the general purposes of the University and the private gift is insufficient, without the addition of the income from the investment of the private gift, to achieve that purpose; and
- (b) any other pooled item in respect of which the Council is otherwise required to do so,

credit the income of the investment pool to the account kept by it in respect of the private gift or other pooled item proportionately according to:

- (c) the value attributed equitably to the private gift or other pooled item by the Council at the date of distribution; and
- (d) the period for which the private gift or other pooled item has formed part of the investment pool since the date of the last preceding distribution of the income of the investment pool.

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

Nature of private gift etc. not affected by pooling

6. (1) The inclusion in an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) does not affect the identity of the pooled item as a private gift, a grant, student tuition fees or class B funds.

(2) The inclusion in an investment pool of a pooled item does not affect any trust to which the pooled item was subject immediately before its inclusion in the investment pool.

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

(3) On the withdrawal from an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) the pooled item is to continue to be subject to any trust to which it was subject immediately before its inclusion in the investment pool.

(4) On the withdrawal from an investment pool of money to the value attributed to any securities or real property by the Council under clause 4 (2) (b), that money is to be subject to any trust to which those securities were subject, or to which that real property was subject, immediately before its inclusion in the investment pool.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 31)

University a continuation of the old University

1. The University is a continuation of, and the same legal entity as, the University of New South Wales established by the University of New South Wales Act 1968.

Chancellor

2. (1) The person who, immediately before the commencement of this clause, held office as the Chancellor of the University of New South Wales:

- (a) remains Chancellor of the University; and
- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Chancellor.

(2) Section 10 (2) does not apply to or in respect of the Chancellor referred to in this clause.

Deputy Chancellor

3. The Council must, at its first meeting that takes place after the commencement of this clause or as soon as practicable thereafter, appoint a Deputy Chancellor of the University.

**SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS -
*continued***

Vice-Chancellor

4. (1) The person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of New South Wales:

- (a) remains Vice-Chancellor of the University; and
- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Vice-Chancellor.

(2) Section 12 (2) does not apply to or in respect of the Vice-Chancellor referred to in this clause.

Savings of delegations

5. Any delegation made or taken to have been made by the Council of the University of New South Wales under the University of New South Wales Act 1968 is to be taken to be a delegation under this Act by the Council.

Existing investments

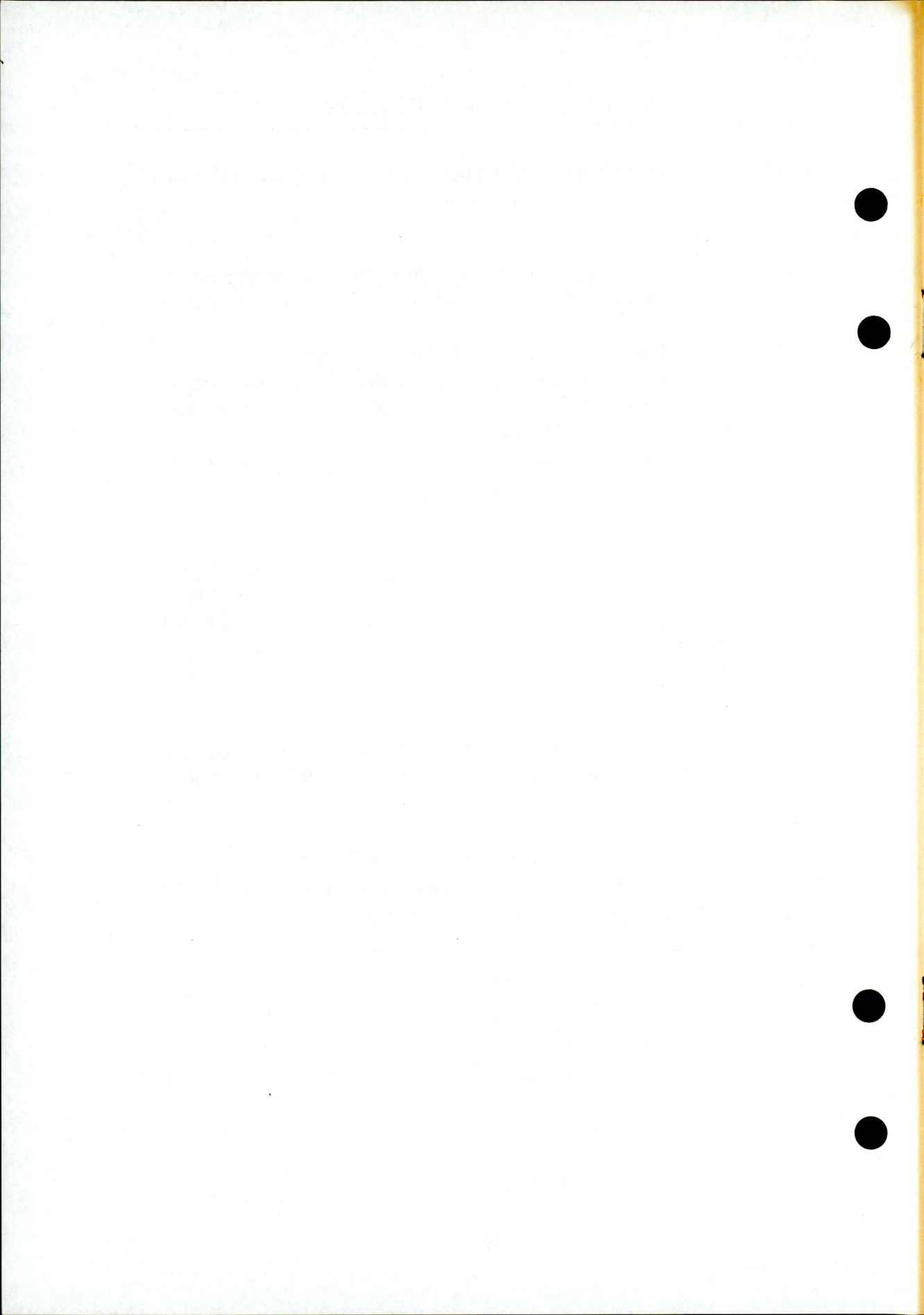
6. Nothing in this Act affects the validity of any investment made on behalf of the University before the commencement of Schedule 2.

By-laws

7. The By-laws of the University of New South Wales:

- (a) continue in force as if they had been made by the Council; and
- (b) may be amended and revoked accordingly.

[*Minister's second reading speech made in -
Legislative Assembly on 27 July 1989
Legislative Council on 10 August 1989*]



FIRST PRINT

UNIVERSITY OF NEW SOUTH WALES BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the University of Sydney Bill 1989.

The objects of this Bill are:

- (a) to reconstitute the University of New South Wales and its Council;
- (b) to vary the powers of the Council of the University in relation to various matters including, in particular, the making of by-laws; and
- (c) to repeal the University of New South Wales Act 1968 and to re-enact its provisions (with modifications) in a new Act.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences (with minor exceptions) on a day or days to be proclaimed. Certain transitional provisions are to commence on the date of assent to the proposed Act.

Clause 3 defines terms used in the proposed Act.

**PART 2 - CONSTITUTION AND FUNCTIONS
OF THE UNIVERSITY**

Clause 4 establishes the University.

Clause 5 provides for the incorporation of the University.

Clause 6 specifies the functions of the University.

Clause 7 empowers the University, for the purpose of exercising its functions, to provide such facilities for its students as it considers desirable.

PART 3 - THE COUNCIL, AUTHORITIES AND OFFICERS OF THE UNIVERSITY

Clause 8 establishes a Council of the University which is to be the governing authority of the University.

Clause 9 provides that the Council of the University shall consist of parliamentary, official, appointed and elected members.

Clause 10 contains provisions relating to the Chancellor of the University.

Clause 11 contains provisions relating to the Deputy Chancellor of the University.

Clause 12 provides that the Vice-Chancellor is the principal executive officer of the University.

Clause 13 designates the Governor as the Visitor of the University.

Clause 14 establishes an Academic Board of the University.

PART 4 - FUNCTIONS OF COUNCIL

Division 1 - General

Clause 15 invests the Council with miscellaneous powers relating to academic, staffing and other matters.

Clause 16 permits the Council to delegate its functions.

Division 2 - Property

Clause 17 specifies the powers of the Council relating to property and places certain restrictions on the Council dealing with land of the University.

Clause 18 gives the Council, subject to certain restrictions, the control and management of land of the Crown on which the University is conducted.

Clause 19 provides for the resumption or appropriation of land for the benefit of the University.

Clause 20 provides for the vesting in the University of land of the Crown on which its activities are conducted.

PART 5 - GENERAL

Clause 21 enables the Treasurer, with the approval of the Governor-in-Council, to advance money to the University for its temporary accommodation.

Clause 22 provides for the financial year of the University.

Clause 23 forbids religious or political discrimination in the admission of students, the conferring of degrees and awards and the appointment of staff.

Clause 24 provides for the exemption of persons, on the grounds of conscience, from membership of the body corporate of the University.

University of New South Wales 1989

Clause 25 enables the re-appointment or re-election of a person to any office under the proposed Act which the person has held and for which he or she is still suitably qualified and eligible.

Clause 26 provides for the use and custody of the seal of the University.

Clause 27 enables the Council, with the approval of the Governor-in-Council, to make by-laws generally for the management, good government and discipline of the University and in relation to certain specified matters.

Clause 28 enables the Council, or another authority specified in the by-laws, to make rules for the regulation of matters concerning a subject-matter specified in the by-laws.

Clause 29 provides for the recovery of charges, fees and other money due to the University.

Clause 30 repeals the University of New South Wales Act 1968, dissolves the Council of the University of New South Wales constituted under that Act and declares certain offices vacant.

Clause 31 is a formal provision that gives effect to the Schedule of savings and transitional provisions. The clause also facilitates the conduct of certain elections.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL**

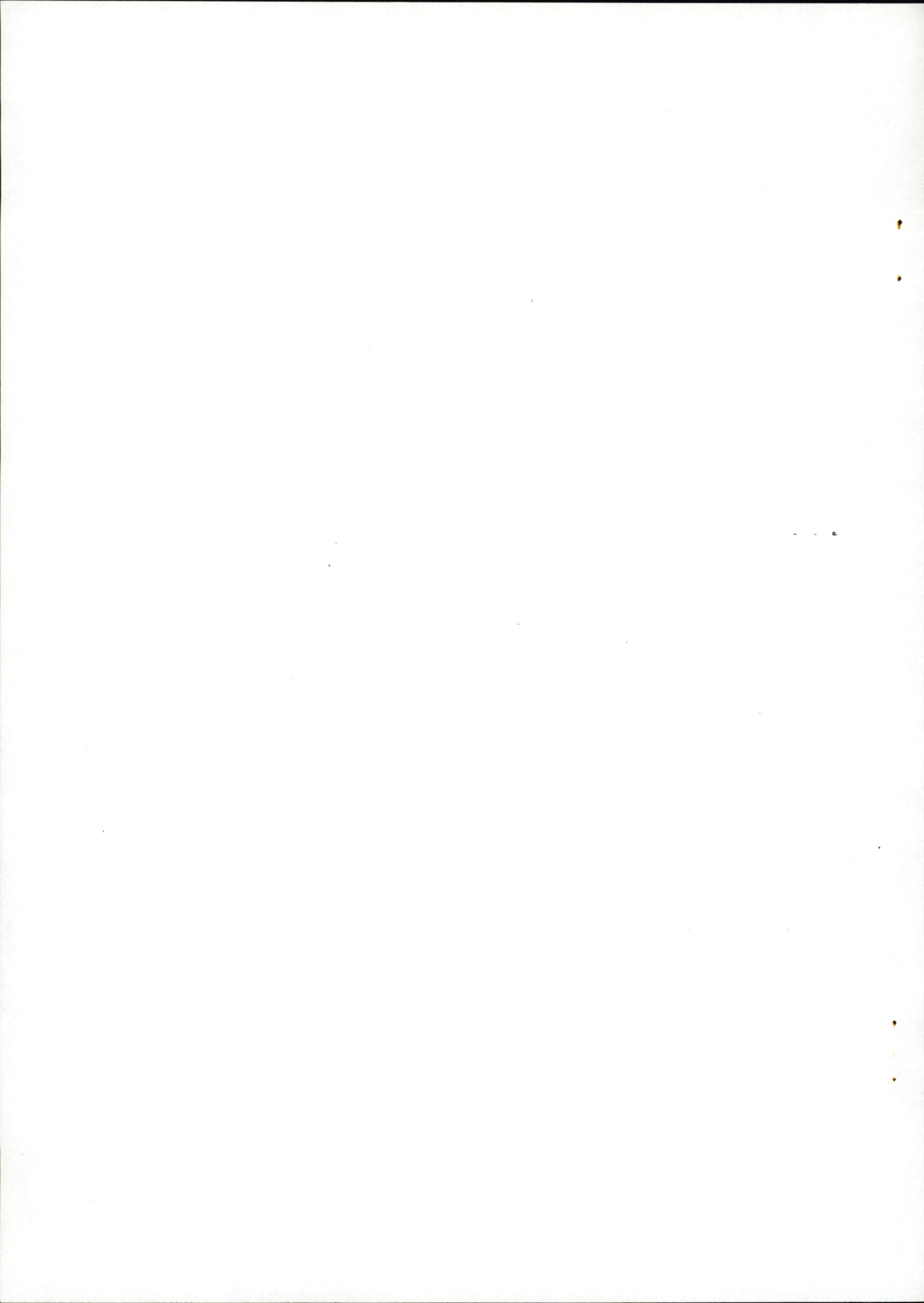
Schedule 1 regulates Council membership (vacation of office etc.), procedure and other matters relating to the Council and its members.

SCHEDULE 2 - POWERS OF INVESTMENT

Schedule 2 sets out the powers of investment of the Council.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 3 contains miscellaneous savings and transitional provisions.



FIRST PRINT

UNIVERSITY OF NEW SOUTH WALES BILL 1989

NEW SOUTH WALES



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SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE COUNCIL

SCHEDULE 2 - POWERS OF INVESTMENT

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

UNIVERSITY OF NEW SOUTH WALES BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act with respect to the constitution and functions of the University of New South Wales; to repeal the University of New South Wales Act 1968; and for other purposes.

University of New South Wales 1989

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the University of New South Wales Act 1989.

Commencement

2. (1) This Act (section 31 (2) and (3) excepted) commences on a day or days to be appointed by proclamation.

(2) The provisions of section 31 (2) and (3) commence on the date of assent to this Act.

Definitions

3. (1) In this Act:

"Council" means the Council of the University;

"University" means the University of New South Wales established by this Act.

(2) In this Act, a reference to a graduate of the University is a reference to a person who is the recipient of a degree or diploma, or of such other award or certificate as may be prescribed by the by-laws, conferred or awarded:

(a) by the University;

(b) by or on behalf of any former institution that has, pursuant to this Act or to the Higher Education (Amalgamation) Act 1989 or otherwise, become a part of the University; or

(c) by any predecessor of any such institution.

(3) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**PART 2 - CONSTITUTION AND FUNCTIONS OF
THE UNIVERSITY**

Establishment of University

4. A University, consisting of:

(a) a Council;

University of New South Wales 1989

- (b) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe; and
- (c) the graduates and students of the University, is established by this Act.

Incorporation of University

5. The University is a body corporate under the name of the University of New South Wales.

Functions of University

6. (1) The functions of the University (within the limits of its resources) include:

- (a) the provision of educational and research facilities of university standard;
- (b) aiding, by research and other suitable means, the advancement, development and practical application of science to industry and commerce;
- (c) the provision of instruction and the carrying out of research in the disciplines of humane studies and medicine and in such other disciplines as the Council may from time to time determine; and
- (d) the conferring of the degrees of Bachelor, Master and Doctor and the awarding of diplomas and other certificates.

(2) The University has such other functions as are conferred or imposed on it by or under this or any other Act.

Facilities to be provided for students

7. The University may, for the purpose of exercising its functions, provide such facilities for its students as it considers desirable.

PART 3 - THE COUNCIL, AUTHORITIES AND OFFICERS OF THE UNIVERSITY

The Council

8. (1) There is to be a Council of the University.

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(2) The Council is the governing authority of the University and has the functions conferred or imposed on it by or under this Act.

Constitution of Council

9. (1) The Council is to consist of:

- (a) parliamentary members;
- (b) official members;
- (c) appointed members; and
- (d) elected members.

(2) The parliamentary members comprise:

- (a) one Member of the Legislative Council elected by that Council:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each periodic Council election within the meaning of section 3 of the Constitution Act 1902; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant; and
- (b) one Member of the Legislative Assembly elected by that Assembly:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each general election of Members of the Legislative Assembly; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant.
- (3) The official members comprise:
 - (a) the Chancellor (if the Chancellor is not otherwise a member of the Council);
 - (b) the Vice-Chancellor; and
 - (c) the person for the time being holding the office of:
 - (i) President of the Academic Board (if that person is not the Vice-Chancellor); or
 - (ii) Deputy President of the Academic Board (if the President is the Vice-Chancellor).

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(4) The appointed members comprise 4 persons appointed by the Minister.

(5) The elected members comprise:

(a) 4 persons:

- (i) who are members of the academic staff of the University;
- (ii) who have such qualifications as may be prescribed by the by-laws; and
- (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws;

(b) one person:

- (i) who is a member of the non-academic staff of the University;
- (ii) who has such qualifications as may be prescribed by the by-laws; and
- (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws;

(c) one person:

- (i) who is a student of the University but who is not a member of the academic or non-academic staff of the University;
- (ii) who has such qualifications as may be prescribed by the by-laws; and
- (iii) who is elected by students of the University in the manner prescribed by the by-laws; and

(d) 4 persons:

- (i) who are graduates of the University (but who are not members of the academic or non-academic staff of the University having the qualifications referred to in paragraph (a) (ii) or (b) (ii) or students of the University having the qualifications referred to in paragraph (c) (ii));
- (ii) who have such qualifications as may be prescribed by the by-laws; and
- (iii) who are elected by graduates of the University in the manner prescribed by the by-laws.

(6) The Council may appoint any other person to be a member of the Council and the person, on being appointed, is to be taken to be an appointed member of the Council in addition to the members appointed under subsection (4).

(7) No more than one person may hold office at any one time as an appointed member under subsection (6).

(8) Schedule 1 has effect in relation to the members and procedure of the Council.

Chancellor

10. (1) Whenever a vacancy in the office of Chancellor occurs, the Council is to elect a person (whether or not a member of the Council) to be Chancellor of the University.

(2) The Chancellor, unless he or she sooner resigns as Chancellor or ceases to be a member of the Council, holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.

(3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

Deputy Chancellor

11. (1) Whenever a vacancy in the office of Deputy Chancellor occurs, the Council must elect one of its members to be Deputy Chancellor of the University.

(2) The Deputy Chancellor, unless he or she sooner resigns as Deputy Chancellor or ceases to be a member of the Council, holds office for 2 years from the date of election and on such conditions as may be prescribed by the by-laws.

(3) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, the Deputy Chancellor has all the functions of the Chancellor.

Vice-Chancellor

12. (1) Whenever a vacancy in the office of Vice-Chancellor occurs, the Council must appoint a person (whether or not a member of the Council) to be Vice-Chancellor of the University.

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(2) The Vice-Chancellor holds office for such period, and on such conditions, as the Council determines.

(3) The Vice-Chancellor is the principal executive officer of the University and has the functions conferred or imposed on the Vice-Chancellor by or under this or any other Act.

Visitor

13. The Governor is the Visitor of the University with full authority and jurisdiction to exercise all functions pertaining to the office of Visitor.

Academic Board

14. (1) There is to be an Academic Board of the University, consisting of:

- (a) the Vice-Chancellor; and
- (b) such other persons as the Council may, in accordance with the by-laws, determine.

(2) Subject to subsection (1), the constitution and functions of the Academic Board are to be as prescribed by the by-laws.

PART 4 - FUNCTIONS OF COUNCIL**Division 1 - General****Powers of Council**

15. (1) The Council:

- (a) may provide such courses, and may confer such degrees and award such diplomas and other certificates, as it thinks fit;
- (b) may appoint and terminate the appointment of academic and other staff of the University;
- (c) has the control and management of the affairs and concerns of the University and may act in all matters concerning the University in such manner as appears to it to be best calculated to promote the objects and interests of the University;

- (d) may borrow money for the purpose of exercising any of its functions, for the renewal of loans or for the discharge or partial discharge of any indebtedness to the Treasurer or to any bank, 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;
 - (e) may invest any funds belonging to or vested in the University;
 - (f) may establish or participate in such trusts, companies or other incorporated bodies as it considers appropriate to promote the objects and interests of the University;
 - (g) may engage in the commercial development of any discovery or invention, or of any intellectual property, in which the University has a right or interest;
 - (h) may establish and maintain branches and colleges of the University, within the University and elsewhere;
 - (i) may make loans and grants to students; and
 - (j) may impose fees, charges and fines.
- (2) The powers of the Council under this section are to be exercised subject to the by-laws.
- (3) Schedule 2 has effect in relation to the investment of funds by the Council.

Delegation by Council

16. The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its functions (except this power of delegation) to any member or committee of the Council or to any authority or officer of the University or to any other person or body prescribed by the by-laws.

Division 2 - Property

Powers of Council relating to property

17. (1) The Council:

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- (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise; and
 - (b) has the control and management of all property at any time vested in or acquired by the University and may, subject to this section, dispose of property in the name and on behalf of the University.
- (2) The Council is not, except with the approval of the Minister, to alienate, mortgage, charge or demise any lands of the University.
- (3) Notwithstanding subsection (2), the Council may, without the approval of the Minister, lease any lands of the University if:
- (a) the term of the lease does not exceed 21 years; and
 - (b) (except where the lessee is a residential college affiliated with the University) there is reserved for the whole of the term the highest rent that can reasonably be obtained.
- (4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease:
- (a) is to be for a term not exceeding 99 years; and
 - (b) is to be at a nominal rent; and
 - (c) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.
- (5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

Powers of Council over certain property vested in Crown

18. (1) Where any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Council has the control and management of that property and is responsible for its maintenance.

(2) Nothing in subsection (1) enables the Council to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).

(3) Notwithstanding subsection (2), the Council may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.

(4) Such a lease:

(a) is to be for a term not exceeding 21 years; and

(b) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.

(5) The Council is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

Acquisition of land

19. (1) For the purposes of this Act, the Governor may, on the recommendation of the Minister, resume or appropriate any land under Division 1 of Part 5 of the Public Works Act 1912.

(2) The Minister is not to make a recommendation for the purposes of this section unless satisfied that adequate provision has been or will be made for the payment by the University of compensation for the resumption or appropriation and of all necessary charges and expenses incidental to the resumption or appropriation.

(3) A resumption or appropriation effected pursuant to this section is to be taken to be for an authorised work within the meaning of the Public Works Act 1912 and the Minister is, in relation to that authorised work, to be taken to be the Constructing Authority within the meaning of that Act.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not, but section 38 of that Act does, apply in relation to a resumption or appropriation under this section.

Grant or transfer of certain land to University

20. (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:

- (a) if it is vested in the Crown - be transferred to the University subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister for Natural Resources thinks fit; or
- (b) if it is vested in a Minister of the Crown - be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit.

(2) A conveyance, transfer or other instrument executed for the purposes of this section:

- (a) is not liable to stamp duty under the Stamp Duties Act 1920; and
- (b) may be registered under any Act without fee.

PART 5 - GENERAL**Advance by Treasurer**

21. The Treasurer may, with the approval of the Governor, advance to the Council money for the temporary accommodation of the University on such terms and conditions in relation to repayment and interest as may be agreed upon.

Financial year

22. The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b) - the year commencing on 1 January; or
- (b) the period prescribed by the by-laws for the purposes of this section.

No religious test or political discrimination

23. A person must not, because of his or her religious or political affiliations, views or beliefs, be denied admission as a student of the University or be ineligible to hold office in, to graduate from or to enjoy any benefit, advantage or privilege of the University.

Exemption from membership of body corporate

24. A student or graduate of the University or a member of staff of the University is entitled to be exempted by the Council, on grounds of conscience, from membership of the body corporate of the University.

Re-appointment or re-election

25. Nothing in this Act prevents any person from being re-appointed or re-elected to any office under this Act if the person is eligible and otherwise qualified to hold that office.

Seal of University

26. The seal of the University is to be kept in such custody as the Council may direct and is only to be affixed to a document pursuant to a resolution of the Council.

By-laws

27. (1) The Council may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the management, good government and discipline of the University;
- (b) the method of election of members of the Council (other than the parliamentary members) who are to be elected;
- (c) the manner and time of convening, holding and adjourning the meetings of the Council or Academic Board;

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- (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Board;
- (e) the functions of the presiding member of the Council or Academic Board;
- (f) the conduct and record of business of the Council or Academic Board;
- (g) the appointment of committees of the Council or Academic Board;
- (h) the quorum and functions of committees of the Council or Academic Board;
- (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor;
- (j) the tenure of office, stipend and functions of the Vice-Chancellor;
- (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise;
- (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University;
- (m) admission to, enrolment in and exclusion from courses of studies;
- (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of:
 - (i) entrance to the University;
 - (ii) tuition;
 - (iii) lectures and classes;
 - (iv) examinations;
 - (v) residence;
 - (vi) the conferring of degrees and the awarding of diplomas and other certificates;
 - (vii) the provision of amenities and services, whether or not of an academic nature; and
 - (viii) an organisation of students or of students and other persons;
- (o) the exemption from, or deferment of, payment of fees and charges, including fines;

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- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements;
 - (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours;
 - (r) the assessments for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes;
 - (s) the admission of students and former students of other universities and institutions of higher education to any status within the University or the granting to graduates of such universities or institutions, or other persons, of degrees or diplomas without examination;
 - (t) the establishment and conduct of places of accommodation for students (including residential colleges and halls of residence within the University) and the affiliation of residential colleges;
 - (u) the affiliation with the University of any educational or research establishment;
 - (v) the creation of faculties, schools, departments, centres or other entities within the University;
 - (w) the provision of schemes of superannuation for the officers and employees of the University;
 - (x) the form and use of academic costume;
 - (y) the form and use of an emblem of the University or of any body within or associated with the University; and
 - (z) the use of the seal of the University.
- (2) A by-law has no effect unless it has been approved by the Governor.

Rules

28. (1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for regulating, or

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providing for the regulation of, any specified matter with respect to which by-laws may be made.

(2) Any such rule:

- (a) has the same force and effect as a by-law; and
- (b) may, from time to time, be amended or repealed by the Council or by the authority or officer of the University empowered to make such a rule.

Recovery of charges, fees and other money

29. Any charge, fee or money due to the University under this Act may be recovered as a debt in any court of competent jurisdiction.

Repeal etc.

30. (1) The University of New South Wales Act 1968, and the University of New South Wales Regulations 1969, are repealed.

(2) The Council of the University of New South Wales, as constituted immediately before the repeal of the University of New South Wales Act 1968, is dissolved.

(3) The persons holding office as members of the Council and Deputy Chancellor immediately before the repeal of the University of New South Wales Act 1968 cease to hold office as such on that repeal.

Savings and transitional provisions

31. (1) Schedule 3 has effect.

(2) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if:

- (a) the whole of this Act; and
- (b) sections 14 and 22 of the Higher Education (Amalgamation) Act 1989,

were in force.

(3) A member who is elected or appointed to the Council under this section does not assume office before the commencement of section 9.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL**

(Sec. 9)

Term of office

1. Subject to this Act, a member of the Council holds office:

- (a) in the case of a parliamentary member, until a member of the House of Parliament that elected the member is elected as a replacement;
- (b) in the case of an official member, while the member holds the office by virtue of which he or she is a member;
- (c) in the case of an appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment;
- (d) in the case of an elected member referred to in section 9 (5) (a), (b) or (c), for such term (not exceeding 2 years) as may be prescribed by the by-laws; and
- (e) in the case of an elected member referred to in section 9 (5) (d), for such term (not exceeding 4 years) as may be prescribed by the by-laws.

Vacation of office

2. The office of a member of the Council becomes vacant if the member:

- (a) dies;
- (b) declines to act;
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of the parliamentary member who is a Member of the Legislative Council, to the President of the Legislative Council;
 - (ii) in the case of the parliamentary member who is a Member of the Legislative Assembly, to the Speaker of the Legislative Assembly;
 - (iii) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), to the Minister; or

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SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - continued

- (iv) in the case of an elected member or a member appointed by the Council under section 9 (6), to the Vice-Chancellor;
- (d) in the case of an appointed or elected member, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her remuneration for their benefit;
- (e) in the case of an appointed or elected member, becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (f) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable;
- (g) in the case of an appointed or elected member, is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence;
- (h) in the case of the parliamentary member elected by the Legislative Council:
 - (i) ceases to be a Member of that Council otherwise than by reason of section 22B (1) (c) of the Constitution Act 1902; or
 - (ii) ceases to be a Member of that Council by reason of section 22B (1) (c) of that Act and does not become a candidate at the next periodic Council election within the meaning of section 3 of that Act or, as the case may be, becomes a candidate but is not elected;

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - continued**

- (i) in the case of the parliamentary member elected by the Legislative Assembly:
 - (i) ceases to be a Member of that Assembly otherwise than by reason of its dissolution or its expiration by effluxion of time; or
 - (ii) ceases to be a Member of that Assembly by reason of its dissolution or its expiration by effluxion of time and does not become a candidate at the next general election of Members of that Assembly or, as the case may be, becomes a candidate but is not elected;
- (j) in the case of an elected member, ceases to be qualified for election;
- (k) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), is removed from office by the Minister; or
- (l) in the case of a member appointed by the Council under section 9 (6), is removed from office by the Council.

Filling of vacancy in office of member

3. (1) If the office of an appointed or elected member of the Council becomes vacant, a person is, subject to this Act and the by-laws, to be appointed or elected to fill the vacancy.

(2) The by-laws may provide that, in such circumstances as may be prescribed, a person is to be appointed or elected (otherwise than to fill the office of a parliamentary member) in such manner as may be prescribed instead of in the manner provided for by this Act.

Committees of the Council

4. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

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**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - continued**

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Liability of Council members and others

5. No matter or thing done by:

- (a) the University, the Council or a member of the Council; or
- (b) any person acting under the direction of the University or the Council,

if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member of the Council or a person so acting personally to any action, liability, claim or demand.

General procedure

6. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the by-laws, to be as determined by the Council.

Presiding member

7. (1) The Chancellor is to preside at all meetings of the Council at which the Chancellor is present.

(2) At any meeting of the Council at which the Chancellor is not present, the Deputy Chancellor is to preside and, in the absence of both the Chancellor and the Deputy Chancellor, a member elected by and from the members present is to preside.

(3) Except as provided by subclause (4), at the meetings of a committee constituted by the Council a member appointed by the Council (or, if no member is so appointed, elected by and from the members present) is to preside.

University of New South Wales 1989

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - continued

(4) At any meeting of a committee constituted by the Council at which the Chancellor is present, the Chancellor is entitled, if he or she so desires, to preside at that meeting.

Quorum

8. At any meeting of the Council, a majority of the total number of members for the time being of the Council constitutes a quorum.

Voting

9. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

SCHEDULE 2 - POWERS OF INVESTMENT

(Sec. 15)

Definitions

1. In this Schedule:

"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

(ii) for any of the purposes of any faculty, department, school or foundation within the University;

(b) grants; or

(c) student tuition fees;

"class B funds" means money held by the University which is not class A funds;

"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;

"investment pool" means an investment pool established by the Council under this Schedule;

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SCHEDULE 2 - POWERS OF INVESTMENT - continued

"pooled item" means:

- (a) a private gift;
- (b) a grant;
- (c) student tuition fees;
- (d) class B funds;
- (e) securities; or
- (f) real property,

forming part of an investment pool;

"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 property given to the University;

"securities" means debentures, stocks, shares, bonds and notes.

Terms of trust to prevail

2. 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
- (c) in the case of property, other than money, given to the University - any instrument creating a trust with respect to that property,

have effect despite clauses 3, 4 and 5.

Investment of money

3. The Council may invest any class A funds or class B funds held by the University:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) at any time at which the Public Authorities (Financial Arrangements) Act 1987 does not apply to the Council so as to authorise any such investment:
 - (i) in accordance with and subject to the Trustee Act 1925; or

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SCHEDULE 2 - POWERS OF INVESTMENT - continued

- (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

Investment pools

4. (1) 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:

- (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:

- (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 income from those securities is to 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 a trust in respect of that real property, specified that the income from that real property is to 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 the date of withdrawal.

(3) The Council must 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 accordance with and subject to the Trustee Act 1925.

Distribution of income of investment pools

5. (1) The Council must, at least once a year, distribute the income of an investment pool.

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SCHEDULE 2 - POWERS OF INVESTMENT - continued

- (2) On the distribution of the income of an investment pool, the Council must, in respect of:
- (a) a pooled item being a private gift where the donor of the private gift has, in an instrument creating a trust in respect of the private gift:
 - (i) specified that the income from the investment of the private gift is to be applied for a purpose other than the general purposes of the University; or
 - (ii) specified that the private gift is to be applied for a purpose other than the general purposes of the University and the private gift is insufficient, without the addition of the income from the investment of the private gift, to achieve that purpose; and
 - (b) any other pooled item in respect of which the Council is otherwise required to do so, credit the income of the investment pool to the account kept by it in respect of the private gift or other pooled item proportionately according to:
 - (c) the value attributed equitably to the private gift or other pooled item by the Council at the date of distribution; and
 - (d) the period for which the private gift or other pooled item has formed part of the investment pool since the date of the last preceding distribution of the income of the investment pool.
- (3) If the Council distributes the income of an investment pool, it may, in respect of a pooled item (other than a pooled item referred to in subclause (2) (a) or (b)) credit the income of the investment pool to any account kept by it.

Nature of private gift etc. not affected by pooling

6. (1) The inclusion in an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) does not affect the identity of the pooled item as a private gift, a grant, student tuition fees or class B funds.

University of New South Wales 1989

SCHEDULE 2 - POWERS OF INVESTMENT - continued

(2) The inclusion in an investment pool of a pooled item does not affect any trust to which the pooled item was subject immediately before its inclusion in the investment pool.

(3) On the withdrawal from an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) the pooled item is to continue to be subject to any trust to which it was subject immediately before its inclusion in the investment pool.

(4) On the withdrawal from an investment pool of money to the value attributed to any securities or real property by the Council under clause 4 (2) (b), that money is to be subject to any trust to which those securities were subject, or to which that real property was subject, immediately before its inclusion in the investment pool.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 31)

University a continuation of the old University

1. The University is a continuation of, and the same legal entity as, the University of New South Wales established by the University of New South Wales Act 1968.

Chancellor

2. (1) The person who, immediately before the commencement of this clause, held office as the Chancellor of the University of New South Wales:

- (a) remains Chancellor of the University; and
- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Chancellor.

(2) Section 10 (2) does not apply to or in respect of the Chancellor referred to in this clause.

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**SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS -
continued****Deputy Chancellor**

3. The Council must, at its first meeting that takes place after the commencement of this clause or as soon as practicable thereafter, appoint a Deputy Chancellor of the University.

Vice-Chancellor

4. (1) The person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of New South Wales:

- (a) remains Vice-Chancellor of the University; and
- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Vice-Chancellor.

(2) Section 12 (2) does not apply to or in respect of the Vice-Chancellor referred to in this clause.

Savings of delegations

5. Any delegation made or taken to have been made by the Council of the University of New South Wales under the University of New South Wales Act 1968 is to be taken to be a delegation under this Act by the Council.

Existing investments

6. Nothing in this Act affects the validity of any investment made on behalf of the University before the commencement of Schedule 2.

By-laws

7. The By-laws of the University of New South Wales:

- (a) continue in force as if they had been made by the Council; and
 - (b) may be amended and revoked accordingly.
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SECOND PRINT

UNIVERSITY OF NEW SOUTH WALES BILL 1989

NEW SOUTH WALES



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SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE
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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, , 1989*

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1989

An Act with respect to the constitution and functions of the University of New South Wales; to repeal the University of New South Wales Act 1968; and for other purposes.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the University of New South Wales Act 1989.

Commencement

2. (1) This Act (section 31 (2) and (3) excepted) commences on a day or days to be appointed by proclamation.

(2) The provisions of section 31 (2) and (3) commence on the date of assent to this Act.

Definitions

3. (1) In this Act:

"Council" means the Council of the University;

"University" means the University of New South Wales established by this Act.

(2) In this Act, a reference to a graduate of the University is a reference to a person who is the recipient of a degree or diploma, or of such other award or certificate as may be prescribed by the by-laws, conferred or awarded:

(a) by the University;

(b) by or on behalf of any former institution that has, pursuant to this Act or to the Higher Education (Amalgamation) Act 1989 or otherwise, become a part of the University; or

(c) by any predecessor of any such institution.

(3) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**PART 2 - CONSTITUTION AND FUNCTIONS OF
THE UNIVERSITY**

Establishment of University

4. A University, consisting of:

- (a) a Council;
- (b) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe; and
- (c) the graduates and students of the University,

is established by this Act.

Incorporation of University

5. The University is a body corporate under the name of the University of New South Wales.

Functions of University

6. (1) The functions of the University (within the limits of its resources) include:

- (a) the provision of educational and research facilities of university standard;
- (b) aiding, by research and other suitable means, the advancement, development and practical application of science to industry and commerce;
- (c) the provision of instruction and the carrying out of research in the disciplines of humane studies and medicine and in such other disciplines as the Council may from time to time determine; and
- (d) the conferring of the degrees of Bachelor, Master and Doctor and the awarding of diplomas and other certificates.

(2) The University has such other functions as are conferred or imposed on it by or under this or any other Act.

Facilities to be provided for students

7. The University may, for the purpose of exercising its functions, provide such facilities for its students as it considers desirable.

PART 3 - THE COUNCIL, AUTHORITIES AND OFFICERS OF THE UNIVERSITY

The Council

8. (1) There is to be a Council of the University.

(2) The Council is the governing authority of the University and has the functions conferred or imposed on it by or under this Act.

Constitution of Council

9. (1) The Council is to consist of:

- (a) parliamentary members;
- (b) official members;
- (c) appointed members; and
- (d) elected members.

(2) The parliamentary members comprise:

- (a) one Member of the Legislative Council elected by that Council:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each periodic Council election within the meaning of section 3 of the Constitution Act 1902; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant; and
- (b) one Member of the Legislative Assembly elected by that Assembly:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each general election of Members of the Legislative Assembly; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant.

(3) The official members comprise:

- (a) the Chancellor (if the Chancellor is not otherwise a member of the Council);

- (b) the Vice-Chancellor; and
 - (c) the person for the time being holding the office of:
 - (i) President of the Academic Board (if that person is not the Vice-Chancellor); or
 - (ii) Deputy President of the Academic Board (if the President is the Vice-Chancellor).
- (4) The appointed members comprise 4 persons appointed by the Minister.
- (5) The elected members comprise:
- (a) 4 persons:
 - (i) who are members of the academic staff of the University;
 - (ii) who have such qualifications as may be prescribed by the by-laws; and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws;
 - (b) one person:
 - (i) who is a member of the non-academic staff of the University;
 - (ii) who has such qualifications as may be prescribed by the by-laws; and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws;
 - (c) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University;
 - (ii) who has such qualifications as may be prescribed by the by-laws; and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws;
 - (d) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University;

- (ii) who has such qualifications as may be prescribed by the by-laws; and
- (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws; and
- (e) 4 persons:
 - (i) who are graduates of the University (but who are not members of the academic or non-academic staff of the University having the qualifications referred to in paragraph (a) (ii) or (b) (ii) or undergraduate or postgraduate students of the University having the qualifications referred to in paragraph (c) (ii) or (d) (ii));
 - (ii) who have such qualifications as may be prescribed by the by-laws; and
 - (iii) who are elected by graduates of the University in the manner prescribed by the by-laws.

(6) The Council may appoint any other person to be a member of the Council and the person, on being appointed, is to be taken to be an appointed member of the Council in addition to the members appointed under subsection (4).

(7) No more than one person may hold office at any one time as an appointed member under subsection (6).

(8) Schedule 1 has effect in relation to the members and procedure of the Council.

Chancellor

10. (1) Whenever a vacancy in the office of Chancellor occurs, the Council is to elect a person (whether or not a member of the Council) to be Chancellor of the University.

(2) The Chancellor, unless he or she sooner resigns as Chancellor or ceases to be a member of the Council, holds office for such period (not exceeding 4 years), and on such conditions, as may be prescribed by the by-laws.

(3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

Deputy Chancellor

11. (1) Whenever a vacancy in the office of Deputy Chancellor occurs, the Council must elect one of its members to be Deputy Chancellor of the University.

(2) The Deputy Chancellor, unless he or she sooner resigns as Deputy Chancellor or ceases to be a member of the Council, holds office for 2 years from the date of election and on such conditions as may be prescribed by the by-laws.

(3) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, the Deputy Chancellor has all the functions of the Chancellor.

Vice-Chancellor

12. (1) Whenever a vacancy in the office of Vice-Chancellor occurs, the Council must appoint a person (whether or not a member of the Council) to be Vice-Chancellor of the University.

(2) The Vice-Chancellor holds office for such period, and on such conditions, as the Council determines.

(3) The Vice-Chancellor is the principal executive officer of the University and has the functions conferred or imposed on the Vice-Chancellor by or under this or any other Act.

Visitor

13. The Governor is the Visitor of the University with full authority and jurisdiction to exercise all functions pertaining to the office of Visitor.

Academic Board

14. (1) There is to be an Academic Board of the University, consisting of:

- (a) the Vice-Chancellor; and
- (b) such other persons as the Council may, in accordance with the by-laws, determine.

(2) Subject to subsection (1), the constitution and functions of the Academic Board are to be as prescribed by the by-laws.

PART 4 - FUNCTIONS OF COUNCIL

Division 1 - General

Powers of Council

15. (1) The Council:

- (a) may provide such courses, and may confer such degrees and award such diplomas and other certificates, as it thinks fit;
- (b) may appoint and terminate the appointment of academic and other staff of the University;
- (c) has the control and management of the affairs and concerns of the University and may act in all matters concerning the University in such manner as appears to it to be best calculated to promote the objects and interests of the University;
- (d) may borrow money for the purpose of exercising any of its functions, for the renewal of loans or for the discharge or partial discharge of any indebtedness to the Treasurer or to any bank, 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;
- (e) may invest any funds belonging to or vested in the University;
- (f) may establish or participate in such trusts, companies or other incorporated bodies as it considers appropriate to promote the objects and interests of the University;
- (g) may engage in the commercial development of any discovery or invention, or of any intellectual property, in which the University has a right or interest;
- (h) may establish and maintain branches and colleges of the University, within the University and elsewhere;
- (i) may make loans and grants to students; and
- (j) may impose fees, charges and fines.

(2) The powers of the Council under this section are to be exercised subject to the by-laws.

(3) Schedule 2 has effect in relation to the investment of funds by the Council.

Delegation by Council

16. The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its functions (except this power of delegation) to any member or committee of the Council or to any authority or officer of the University or to any other person or body prescribed by the by-laws.

Division 2 - Property

Powers of Council relating to property

17. (1) The Council:

- (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise; and
- (b) has the control and management of all property at any time vested in or acquired by the University and may, subject to this section, dispose of property in the name and on behalf of the University.

(2) The Council is not, except with the approval of the Minister, to alienate, mortgage, charge or demise any lands of the University.

(3) Notwithstanding subsection (2), the Council may, without the approval of the Minister, lease any lands of the University if:

- (a) the term of the lease does not exceed 21 years; and
- (b) (except where the lessee is a residential college affiliated with the University) there is reserved for the whole of the term the highest rent that can reasonably be obtained.

(4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease:

- (a) is to be for a term not exceeding 99 years; and
- (b) is to be at a nominal rent; and
- (c) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.

(5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

Powers of Council over certain property vested in Crown

18. (1) Where any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Council has the control and management of that property and is responsible for its maintenance.

(2) Nothing in subsection (1) enables the Council to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).

(3) Notwithstanding subsection (2), the Council may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.

(4) Such a lease:

(a) is to be for a term not exceeding 21 years; and

(b) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.

(5) The Council is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

Acquisition of land

19. (1) For the purposes of this Act, the Governor may, on the recommendation of the Minister, resume or appropriate any land under Division 1 of Part 5 of the Public Works Act 1912.

(2) The Minister is not to make a recommendation for the purposes of this section unless satisfied that adequate provision has been or will be made for the payment by the University of compensation for the resumption or appropriation and of all necessary charges and expenses incidental to the resumption or appropriation.

(3) A resumption or appropriation effected pursuant to this section is to be taken to be for an authorised work within the meaning of the Public Works Act 1912 and the Minister is, in relation to that authorised work, to be taken to be the Constructing Authority within the meaning of that Act.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not, but section 38 of that Act does, apply in relation to a resumption or appropriation under this section.

Grant or transfer of certain land to University

20. (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:

- (a) if it is vested in the Crown - be transferred to the University subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister for Natural Resources thinks fit; or
- (b) if it is vested in a Minister of the Crown - be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit.

(2) A conveyance, transfer or other instrument executed for the purposes of this section:

- (a) is not liable to stamp duty under the Stamp Duties Act 1920; and
- (b) may be registered under any Act without fee.

PART 5 - GENERAL

Advance by Treasurer

21. The Treasurer may, with the approval of the Governor, advance to the Council money for the temporary accommodation of the University on such terms and conditions in relation to repayment and interest as may be agreed upon.

Financial year

22. The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b) - the year commencing on 1 January; or
- (b) the period prescribed by the by-laws for the purposes of this section.

No religious test or political discrimination

23. A person must not, because of his or her religious or political affiliations, views or beliefs, be denied admission as a student of the University or be ineligible to hold office in, to graduate from or to enjoy any benefit, advantage or privilege of the University.

Exemption from membership of body corporate

24. A student or graduate of the University or a member of staff of the University is entitled to be exempted by the Council, on grounds of conscience, from membership of the body corporate of the University.

Re-appointment or re-election

25. Nothing in this Act prevents any person from being re-appointed or re-elected to any office under this Act if the person is eligible and otherwise qualified to hold that office.

Seal of University

26. The seal of the University is to be kept in such custody as the Council may direct and is only to be affixed to a document pursuant to a resolution of the Council.

By-laws

27. (1) The Council may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the management, good government and discipline of the University;
- (b) the method of election of members of the Council (other than the parliamentary members) who are to be elected;
- (c) the manner and time of convening, holding and adjourning the meetings of the Council or Academic Board;
- (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Board;
- (e) the functions of the presiding member of the Council or Academic Board;
- (f) the conduct and record of business of the Council or Academic Board;
- (g) the appointment of committees of the Council or Academic Board;
- (h) the quorum and functions of committees of the Council or Academic Board;

- (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor;
- (j) the tenure of office, stipend and functions of the Vice-Chancellor;
- (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise and the designation of students of the University as undergraduate students, postgraduate students or otherwise;
- (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University;
- (m) admission to, enrolment in and exclusion from courses of studies;
- (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of:
 - (i) entrance to the University;
 - (ii) tuition;
 - (iii) lectures and classes;
 - (iv) examinations;
 - (v) residence;
 - (vi) the conferring of degrees and the awarding of diplomas and other certificates;
 - (vii) the provision of amenities and services, whether or not of an academic nature; and
 - (viii) an organisation of students or of students and other persons;
- (o) the exemption from, or deferment of, payment of fees and charges, including fines;
- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements;
- (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates and honours and the attendance of candidates for degrees, diplomas, certificates and honours;
- (r) the assessments for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes;

- (s) the admission of students and former students of other universities and institutions of higher education to any status within the University or the granting to graduates of such universities or institutions, or other persons, of degrees or diplomas without examination;
 - (t) the establishment and conduct of places of accommodation for students (including residential colleges and halls of residence within the University) and the affiliation of residential colleges;
 - (u) the affiliation with the University of any educational or research establishment;
 - (v) the creation of faculties, schools, departments, centres or other entities within the University;
 - (w) the provision of schemes of superannuation for the officers and employees of the University;
 - (x) the form and use of academic costume;
 - (y) the form and use of an emblem of the University or of any body within or associated with the University; and
 - (z) the use of the seal of the University.
- (2) A by-law has no effect unless it has been approved by the Governor.

Rules

28. (1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for regulating, or providing for the regulation of, any specified matter with respect to which by-laws may be made.

(2) Any such rule:

- (a) has the same force and effect as a by-law; and
- (b) may, from time to time, be amended or repealed by the Council or by the authority or officer of the University empowered to make such a rule.

Recovery of charges, fees and other money

29. Any charge, fee or money due to the University under this Act may be recovered as a debt in any court of competent jurisdiction.

Repeal etc.

30. (1) The University of New South Wales Act 1968, and the University of New South Wales Regulations 1969, are repealed.

(2) The Council of the University of New South Wales, as constituted immediately before the repeal of the University of New South Wales Act 1968, is dissolved.

(3) The persons holding office as members of the Council and Deputy Chancellor immediately before the repeal of the University of New South Wales Act 1968 cease to hold office as such on that repeal.

Savings and transitional provisions

31. (1) Schedule 3 has effect.

(2) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if:

- (a) the whole of this Act; and
- (b) sections 14 and 22 of the Higher Education (Amalgamation) Act 1989,

were in force.

(3) A member who is elected or appointed to the Council under this section does not assume office before the commencement of section 9.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL**

(Sec. 9)

Term of office

1. Subject to this Act, a member of the Council holds office:

- (a) in the case of a parliamentary member, until a member of the House of Parliament that elected the member is elected as a replacement;
- (b) in the case of an official member, while the member holds the office by virtue of which he or she is a member;

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

- (c) in the case of an appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment;
- (d) in the case of an elected member referred to in section 9 (5) (a), (b), (c) or (d), for such term (not exceeding 2 years) as may be prescribed by the by-laws; and
- (e) in the case of an elected member referred to in section 9 (5) (e), for such term (not exceeding 4 years) as may be prescribed by the by-laws.

Vacation of office

2. The office of a member of the Council becomes vacant if the member:

- (a) dies;
- (b) declines to act;
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of the parliamentary member who is a Member of the Legislative Council, to the President of the Legislative Council;
 - (ii) in the case of the parliamentary member who is a Member of the Legislative Assembly, to the Speaker of the Legislative Assembly;
 - (iii) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), to the Minister; or
 - (iv) in the case of an elected member or a member appointed by the Council under section 9 (6), to the Vice-Chancellor;
- (d) in the case of an appointed or elected member, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her remuneration for their benefit;
- (e) in the case of an appointed or elected member, becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;

- (f) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable;
- (g) in the case of an appointed or elected member, is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence;
- (h) in the case of the parliamentary member elected by the Legislative Council:
 - (i) ceases to be a Member of that Council otherwise than by reason of section 22B (1) (c) of the Constitution Act 1902; or
 - (ii) ceases to be a Member of that Council by reason of section 22B (1) (c) of that Act and does not become a candidate at the next periodic Council election within the meaning of section 3 of that Act or, as the case may be, becomes a candidate but is not elected;
- (i) in the case of the parliamentary member elected by the Legislative Assembly:
 - (i) ceases to be a Member of that Assembly otherwise than by reason of its dissolution or its expiration by effluxion of time; or
 - (ii) ceases to be a Member of that Assembly by reason of its dissolution or its expiration by effluxion of time and does not become a candidate at the next general election of Members of that Assembly or, as the case may be, becomes a candidate but is not elected;
- (j) in the case of an elected member, ceases to be qualified for election;

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued***

- (k) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), is removed from office by the Minister; or
- (l) in the case of a member appointed by the Council under section 9 (6), is removed from office by the Council.

Filling of vacancy in office of member

3. (1) If the office of an appointed or elected member of the Council becomes vacant, a person is, subject to this Act and the by-laws, to be appointed or elected to fill the vacancy.

(2) The by-laws may provide that, in such circumstances as may be prescribed, a person is to be appointed or elected (otherwise than to fill the office of a parliamentary member) in such manner as may be prescribed instead of in the manner provided for by this Act.

Committees of the Council

4. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

Liability of Council members and others

5. No matter or thing done by:

- (a) the University, the Council or a member of the Council; or
- (b) any person acting under the direction of the University or the Council,

if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member of the Council or a person so acting personally to any action, liability, claim or demand.

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL - *continued*

General procedure

6. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the by-laws, to be as determined by the Council.

Presiding member

7. (1) The Chancellor is to preside at all meetings of the Council at which the Chancellor is present.

(2) At any meeting of the Council at which the Chancellor is not present, the Deputy Chancellor is to preside and, in the absence of both the Chancellor and the Deputy Chancellor, a member elected by and from the members present is to preside.

(3) Except as provided by subclause (4), at the meetings of a committee constituted by the Council a member appointed by the Council (or, if no member is so appointed, elected by and from the members present) is to preside.

(4) At any meeting of a committee constituted by the Council at which the Chancellor is present, the Chancellor is entitled, if he or she so desires, to preside at that meeting.

Quorum

8. At any meeting of the Council, a majority of the total number of members for the time being of the Council constitutes a quorum.

Voting

9. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

SCHEDULE 2 - POWERS OF INVESTMENT

(Sec. 15)

Definitions

1. In this Schedule:

"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
 - (ii) for any of the purposes of any faculty, department, school or foundation within the University;
- (b) grants; or
- (c) student tuition fees;

"class B funds" means money held by the University which is not class A funds;

"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;

"investment pool" means an investment pool established by the Council under this Schedule;

"pooled item" means:

- (a) a private gift;
- (b) a grant;
- (c) student tuition fees;
- (d) class B funds;
- (e) securities; or
- (f) real property,

forming part of an investment pool;

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

"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 property given to the University;

"securities" means debentures, stocks, shares, bonds and notes.

Terms of trust to prevail

2. 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
- (c) in the case of property, other than money, given to the University - any instrument creating a trust with respect to that property,

have effect despite clauses 3, 4 and 5.

Investment of money

3. The Council may invest any class A funds or class B funds held by the University:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) at any time at which the Public Authorities (Financial Arrangements) Act 1987 does not apply to the Council so as to authorise any such investment:
 - (i) in accordance with and subject to the Trustee Act 1925; or
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

Investment pools

4. (1) 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:

(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:

(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 income from those securities is to 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 a trust in respect of that real property, specified that the income from that real property is to 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 the date of withdrawal.

(3) The Council must 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 accordance with and subject to the Trustee Act 1925.

Distribution of income of investment pools

5. (1) The Council must, at least once a year, distribute the income of an investment pool.

(2) On the distribution of the income of an investment pool, the Council must, in respect of:

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

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

- (i) specified that the income from the investment of the private gift is to be applied for a purpose other than the general purposes of the University; or
 - (ii) specified that the private gift is to be applied for a purpose other than the general purposes of the University and the private gift is insufficient, without the addition of the income from the investment of the private gift, to achieve that purpose; and
- (b) any other pooled item in respect of which the Council is otherwise required to do so,
- credit the income of the investment pool to the account kept by it in respect of the private gift or other pooled item proportionately according to:
- (c) the value attributed equitably to the private gift or other pooled item by the Council at the date of distribution; and
 - (d) the period for which the private gift or other pooled item has formed part of the investment pool since the date of the last preceding distribution of the income of the investment pool.
- (3) If the Council distributes the income of an investment pool, it may, in respect of a pooled item (other than a pooled item referred to in subclause (2) (a) or (b)) credit the income of the investment pool to any account kept by it.

Nature of private gift etc. not affected by pooling

6. (1) The inclusion in an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) does not affect the identity of the pooled item as a private gift, a grant, student tuition fees or class B funds.

(2) The inclusion in an investment pool of a pooled item does not affect any trust to which the pooled item was subject immediately before its inclusion in the investment pool.

(3) On the withdrawal from an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) the pooled item is to continue to be subject to any trust to which it was subject immediately before its inclusion in the investment pool.

SCHEDULE 2 - POWERS OF INVESTMENT - *continued*

(4) On the withdrawal from an investment pool of money to the value attributed to any securities or real property by the Council under clause 4 (2) (b), that money is to be subject to any trust to which those securities were subject, or to which that real property was subject, immediately before its inclusion in the investment pool.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS
(Sec. 31)

University a continuation of the old University

1. The University is a continuation of, and the same legal entity as, the University of New South Wales established by the University of New South Wales Act 1968.

Chancellor

2. (1) The person who, immediately before the commencement of this clause, held office as the Chancellor of the University of New South Wales:

- (a) remains Chancellor of the University; and
- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Chancellor.

(2) Section 10 (2) does not apply to or in respect of the Chancellor referred to in this clause.

Deputy Chancellor

3. The Council must, at its first meeting that takes place after the commencement of this clause or as soon as practicable thereafter, appoint a Deputy Chancellor of the University.

Vice-Chancellor

4. (1) The person who, immediately before the commencement of this clause, held office as the Vice-Chancellor of the University of New South Wales:

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS -
continued

- (a) remains Vice-Chancellor of the University; and
- (b) continues to hold office as such (unless he or she sooner resigns) for the residue of the term for which he or she was appointed as Vice-Chancellor.

(2) Section 12 (2) does not apply to or in respect of the Vice-Chancellor referred to in this clause.

Savings of delegations

5. Any delegation made or taken to have been made by the Council of the University of New South Wales under the University of New South Wales Act 1968 is to be taken to be a delegation under this Act by the Council.

Existing investments

6. Nothing in this Act affects the validity of any investment made on behalf of the University before the commencement of Schedule 2.

By-laws

7. The By-laws of the University of New South Wales:
- (a) continue in force as if they had been made by the Council; and
 - (b) may be amended and revoked accordingly.
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