

**COLLEGES OF ADVANCED EDUCATION
(AMENDMENT) ACT, 1981, No. 87**

New South Wales.



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 87, 1981.

An Act to amend the Colleges of Advanced Education Act, 1975,
with respect to the dissolution of a corporate college of
advanced education and the appointment of an administrator
of such a corporate college. [Assented to, 9th June, 1981.]

Colleges of Advanced Education (Amendment).

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

Short title.

1. This Act may be cited as the "Colleges of Advanced Education (Amendment) Act, 1981".

Amendment of Act No. 11, 1975.

2. The Colleges of Advanced Education Act, 1975, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 2.)

**AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION
ACT, 1975.**

(1) Sections 5A, 5B—

After section 5, insert :—

Dissolution of corporate college.

5A. Schedule 2 has effect in respect of the dissolution of a corporate college.

Colleges of Advanced Education (Amendment).

SCHEDULE 1—*continued*.AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued*.**Placing of corporate college under control of administrator.**

5B. Schedule 3 has effect in respect of the placing of a corporate college under the control of an administrator.

(2) Schedules 2, 3—

After Schedule 1, insert :—

SCHEDULE 2.

(Sec. 5A.)

DISSOLUTION OF CORPORATE COLLEGE.

Interpretation: Sch. 2.

1. In this Schedule—

“appointed day”, in relation to a dissolved college, means the day upon which the college is dissolved;

“appointed person”, in relation to a dissolved college, means, except to such extent and for such purposes, if any, as a corporate college is specified in the order by which the college is dissolved as being the appointed person, the corporation;

“corporation” means the corporation constituted by clause 7 (1);

“dissolved college” means a college dissolved by an order under clause 5 (1);

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act;

“transferred servant” means a servant of a corporate college who becomes—

- (a) a servant of another college;
- (b) an officer or temporary employee of the Public Service; or
- (c) a member of a Teaching Service,

in accordance with clause 8 (1).

Minister may recommend dissolution.

2. (1) Where the Minister is of the opinion—
- (a) that a corporate college is unable to meet its debts as they fall due;
 - (b) that a corporate college lacks sufficient funds to perform its functions adequately;
 - (c) that there has been such a substantial decrease in the demand for the advanced education courses provided by a corporate college that the college has lost its viability;
 - (d) that it would be more efficient or economical, or both, to dissolve a corporate college; or

Colleges of Advanced Education (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—continued.**

- (e) that population changes or movements or other changes in the community or community needs require the transfer or relocation of resources employed in the provision of advanced education courses by a corporate college,

he may recommend to the Governor that the corporate college be dissolved.

(2) The Minister shall not make a recommendation under subclause (1) in relation to a corporate college unless—

- (a) he is satisfied that the dissolution of the college is in the best interests of the State;
- (b) he has consulted with the college regarding the proposed recommendation; and
- (c) he has considered the interests of the staff and students of the college.

Arrangements relating to staff.

3. (1) Before a corporate college is dissolved, the Minister—

- (a) may, in consultation with the Board, persons appointed in accordance with the regulations as representatives of the servants of the college, the councils or governing bodies of such other colleges or educational institutions as may be concerned and, as the case may require, the Public Service Board and the Education Commission of New South Wales, make arrangements for a servant of the college (not being a casual employee), upon its dissolution, to be transferred to a position in—
 - (i) another college;
 - (ii) the Public Service; or
 - (iii) a Teaching Service; and
- (b) shall notify the servant of the arrangements referred to in paragraph (a) that have been made for his transfer.

(2) Nothing in this clause authorises the transfer of a person to a position in—

- (a) another college without the concurrence of the council of that college;
- (b) the Public Service without the concurrence of the Public Service Board; or

Colleges of Advanced Education (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

(c) a Teaching Service without the concurrence of the Education Commission of New South Wales.

(3) The arrangements, referred to in subclause (1) (a), for the transfer of a servant of a college may be made in respect of the servant personally or by reference to a class or description of servants to which the servant belongs.

(4) A servant of a college shall be deemed to have been notified of the arrangements, referred to in subclause (1) (a), for his transfer if the arrangements are specified in the order by which the college is dissolved.

Arrangements relating to students.

4. (1) Before a corporate college is dissolved, the Minister shall—

(a) in consultation with the Board, persons appointed in accordance with the regulations as representatives of the students of the college, the councils or governing bodies of such other colleges or educational institutions as may be concerned and, if the case so requires, the Education Commission of New South Wales, make arrangements for each student enrolled in an advanced education course provided by the college, upon its dissolution, to be transferred to a course or programme of study provided by—

(i) another college; or

(ii) some other educational institution,

being a course or programme of study that is, in the opinion of the Minister, substantially the same, in academic content, as the advanced education course in which the student is enrolled at the college to be dissolved; and

(b) notify each student of the college of the arrangements referred to in paragraph (a) that have been made for his transfer.

(2) The arrangements, referred to in subclause (1) (a), for the transfer of each student enrolled in an advanced education course may be made in respect of a student personally or by reference to a class or description of students to which the student belongs.

Colleges of Advanced Education (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—continued.**

(3) A student of a college shall be deemed to have been notified of the arrangements, referred to in subclause (1) (a), for his transfer if the arrangements are specified in the order by which the college is dissolved.

Governor may dissolve college.

5. (1) The Governor may, on the recommendation of the Minister under clause 2 (1), by order published in the Gazette, dissolve a corporate college.

(2) An order under subclause (1)—

(a) shall specify the date on which the college to which the order relates is dissolved; and

(b) may specify, in relation to that college—

(i) that a corporate college be the appointed person to such extent and for such purposes as may be specified in the order;

(ii) the arrangements made under clause 3 (1) (a) in respect of servants;

(iii) the arrangements made under clause 4 (1) (a) in respect of students; and

(iv) a person for the purposes of clause 9.

Transfer of assets, etc., of dissolved college.

6. (1) On and from the appointed day for a dissolved college, subject to and in accordance with any provision of the order by which the college is dissolved and by which a corporate college is specified in that order as being the appointed person—

(a) all real and personal property and all right and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to the dissolved college shall vest in and belong to the appointed person;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

- (b) all money and liquidated and unliquidated claims that, immediately before that day, were payable to or recoverable by the dissolved college shall be money and liquidated and unliquidated claims payable to or recoverable by the appointed person;
- (c) all proceedings pending immediately before that day at the suit of the dissolved college shall be deemed to be proceedings pending on that day at the suit of the appointed person and all proceedings so pending at the suit of any person against the dissolved college shall be deemed to be proceedings pending at the suit of that person against the appointed person;
- (d) all contracts, agreements, arrangements and undertakings (not being a contract of employment or a contract, agreement, arrangement or undertaking entered into by a student with respect to the provision to the student of an advanced education course or some other course or programme of study) entered into with, and all securities lawfully given to or by, the dissolved college and in force immediately before that day shall be deemed to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the appointed person;
- (e) the appointed person may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this subclause and for the prosecution of proceedings so referred to as the dissolved college might have done but for its dissolution;
- (f) the appointed person may enforce and realise any security or charge existing immediately before that day in favour of the dissolved college and may exercise any powers thereby conferred on the dissolved college as if the security or charge were a security or charge in favour of the appointed person;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
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- (g) all debts, money and claims, liquidated and unliquidated, that, immediately before that day, were due or payable by, or recoverable against, the dissolved college shall be debts due by, money payable by and claims recoverable against, the appointed person;
- (h) all liquidated and unliquidated claims for which the dissolved college would, but for its dissolution, have been liable shall be liquidated and unliquidated claims for which the appointed person shall be liable; and
- (i) a reference in any other Act, or in any regulation, by-law or other statutory instrument to the dissolved college shall be read and construed as a reference to the appointed person.

(2) Subject to this Act and any order by which a corporate college is dissolved, any act, matter or thing done or omitted to be done before the appointed day for a dissolved college by, to or in respect of the dissolved college shall, to the extent that, but for the dissolution of the college, that act, matter or thing would on or after that day have had any force or effect or been in operation, be deemed to have been done or omitted to be done by, to or in respect of the appointed person.

(3) No attornment to the appointed person by a lessee (not being the lessee under a lease to which subclause (4) relates) from a dissolved college shall be required.

(4) Notwithstanding any other provision of this clause, on the appointed day for a dissolved college a lease in force immediately before the appointed day, being a lease of a kind referred to in section 5 (9) granted by the dissolved college, is terminated.

Minister to be corporation sole for certain purposes.

7. (1) The Minister is, for the purpose of exercising or performing any power, authority, duty or function expressed to be conferred or imposed on him as the appointed person or the

Colleges of Advanced Education (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

corporation by or under this Act, hereby incorporated as a corporation sole with the corporate name "Minister administering the Colleges of Advanced Education Act, 1975".

(2) The corporation—

- (a) has perpetual succession;
- (b) shall have an official seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer; and
- (e) is, for the purpose of any Act, a statutory body representing the Crown.

(3) The seal of the corporation shall not be affixed to any instrument or document except in the presence of the Minister, or an officer of the Board for the time being authorised by him for the purpose, who shall attest by his signature the fact and date of the affixing of the seal.

(4) All courts and persons acting judicially—

- (a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document; and
- (b) shall, until the contrary is proved, presume that the seal was properly affixed.

(5) Property vested in the corporation pursuant to clause 6 (1) may be disposed of in accordance with subclauses (6) and (7).

Colleges of Advanced Education (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

(6) The Governor may, by notification published in the Gazette, divest the corporation of any real property and vest any such property in such corporate college or other person as may be specified in the notification.

(7) The corporation may transfer any personal property vested in it to such corporate colleges or other persons as the corporation may determine.

(8) Claims and proceedings that, pursuant to clause 6 (1), are claims and proceedings against the corporation are claims and proceedings against it as nominal defendant.

Transferred staff.

8. (1) A person who, immediately before the appointed day for a dissolved college, was a servant of that college and who—

- (a) presents himself for work, on the appointed day, in the position to which he is, on that day, in accordance with the arrangements referred to in clause 3 (1) (a), to be transferred; or
- (b) has, in the opinion of the Minister, a reasonable excuse for not presenting himself for work, on the appointed day, in the position to which he is, on that day, in accordance with the arrangements referred to in clause 3 (1) (a), to be transferred but presents himself for work in that position as soon as practicable after that day,

shall, upon presenting himself for work under paragraph (a) or (b), as the case may be, become—

- (c) a servant of another college;
- (d) an officer or temporary employee of the Public Service; or
- (e) a member of a Teaching Service,

as the case may require.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

(2) A transferred servant shall be paid salary or wages, and allowances, at a rate not less than the rate that was payable to him immediately before the appointed day for the college of which he was, immediately before that day, a servant, subject, in the case of salary or wages, to any adjustment necessary to give effect to any fluctuation in the basic wage for adult males, or adult females, as the case may be, for the time being in force within the meaning of Part V of the Industrial Arbitration Act, 1940, until his salary is, or his wages or allowances are, varied or altered by an award of a competent tribunal, an industrial agreement, the employer to which he is transferred or otherwise in accordance with law.

(3) Subject to subclause (4), where a transferred servant was, immediately before the appointed day for the college of which he was, immediately before that day, a servant, a contributor to a superannuation scheme, he—

- (a) shall retain any rights accrued or accruing to him as such a contributor; and
- (b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before the appointed day,

as if he had continued to be a servant of the dissolved college during his service with the employer to which he is transferred, and—

- (c) his service with the employer to which he is transferred shall be deemed to be service with the dissolved college for the purposes of any law under which those rights accrued or were accruing or under which he continues to contribute; and
- (d) he shall be deemed to be a servant of the dissolved college for the purposes of any superannuation scheme to which, by the operation of this subclause, he is entitled to contribute.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
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(4) A person who, but for this subclause, would be entitled under subclause (3) to contribute to a superannuation scheme shall not be so entitled upon his becoming a contributor to any other superannuation scheme, and the provisions of subclause (3) (d) cease to apply to or in respect of him in any case where he becomes a contributor to another superannuation scheme.

(5) Subclause (4) does not prevent the payment to a transferred servant, upon his ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to him if he had ceased, by reason of resignation, to be a contributor.

(6) Where, pursuant to subclause (3) (b), a transferred servant continues to contribute to a superannuation scheme, the employer to which he is transferred shall contribute to that superannuation scheme the same amount as would have been payable by the dissolved college if that person had remained a servant of the dissolved college and been paid salary or wages at the rate paid to him by the employer to which he is transferred.

(7) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of a transferred servant with a dissolved college shall, if not so deemed by section 13 (6), be deemed to be service with the employer to which he is transferred.

(8) For the purpose of calculating the entitlement of a transferred servant to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the transferred servant would be entitled—

- (a) any long service leave or leave in the nature of long service leave; and
- (b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service leave,

taken or received by the transferred servant before that time.

Colleges of Advanced Education (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

(9) Subject to subclause (10), a transferred servant shall retain any right to annual leave accrued to him in respect of his service with the dissolved college.

(10) A person who becomes a member of a Teaching Service pursuant to subclause (1) shall not retain any right to annual leave accrued to him as a servant of a dissolved college but shall, instead of that right, be entitled to compensation.

(11) The amount of compensation to which a person is entitled pursuant to subclause (10) is the monetary equivalent of the annual leave the right to which he would, but for that subclause, retain, calculated by reference to the salary or wages payable to him immediately before the appointed day for the college of which he was, immediately before that day, a servant.

(12) The compensation to which a person is entitled pursuant to subclause (10) is recoverable from the Government of New South Wales and shall be paid out of the Consolidated Revenue Fund which, to the necessary extent, is hereby appropriated accordingly.

(13) A transferred servant is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.

(14) Nothing in this clause affects the operation of the Industrial Arbitration Act, 1940.

Superannuation—employer's liability.

9. Where, before the appointed day for a dissolved college, a person died or retired or was retrenched and the person was, at the date of his death, retirement or retrenchment, a servant of the dissolved college, which college was, at that date, for the purposes of any superannuation scheme, his employer, then, for the purposes of the Act by or under which that scheme is established,

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SCHEDULE 1—*continued.*AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

the Government of New South Wales or, where the order by which the college is dissolved so specifies, a person specified in that order for the purposes of this clause shall, on and after the appointed day, be deemed to be the employer in the service of whom that person was employed at the date of his death, retirement or retrenchment for the purposes of any provision in that Act under which payments may be required to be made by that employer in respect of the superannuation scheme.

Students.

10. (1) Where a student enrolls in the course or programme of study in respect of which arrangements for his transfer have been made pursuant to clause 4 (1) (a), the college or institution to which he has transferred—

(a) shall, as far as it may practicably do so, give him credit in that course or programme for any subject or work completed by him in the advanced education course from which he has transferred; and

(b) where—

(i) before the completion of that course or programme the student requests the council or governing body of that college or institution to confer on him, on completion of that course or programme, an academic award under the seal of the dissolved college;

(ii) in the opinion of that council or governing body the student has completed such part of his course or programme at the dissolved college as to warrant his academic award being conferred under the seal of the dissolved college; and

(iii) the student satisfactorily completes the course or programme in which he has enrolled at the college or institution to which he has transferred,

shall confer that academic award on the student under the seal of the dissolved college.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

(2) A person having custody or possession of the common seal of the dissolved college shall make the common seal available to a college or educational institution requiring the common seal for the purposes of subclause (1) (b).

(3) Where a person completes an advanced education course provided by a corporate college but the college is dissolved before an academic award has been conferred on the person in respect of the course, the appointed person shall confer the academic award on the person under the common seal of the dissolved college.

Regulations.

11. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the dissolution of a corporate college.

(2) A provision made under subclause (1) may take effect as from the appointed day for a dissolved college or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

SCHEDULE 3.

(Sec. 5B.)

CORPORATE COLLEGE UNDER CONTROL OF ADMINISTRATOR.

Interpretation : Sch. 3.

1. In this Schedule—

“administrator”, in relation to a corporate college, means the person appointed as administrator of that college pursuant to clause 4;

“appointed day”, in relation to a corporate college, means the day upon which an administrator is appointed for the corporate college;

“Department” means a Department within the meaning of the Public Service Act, 1979;

“Department Head”, in relation to a Department, means the Department Head within the meaning of the Public Service Act, 1979, in relation to that Department;

“higher education” has the meaning ascribed thereto in section 4 of the Higher Education Act, 1975.

Minister may recommend appointment of administrator.

2. Where the Minister is of the opinion—

- (a) that a corporate college is unable to meet its debts as they fall due;
- (b) that a corporate college lacks sufficient funds to perform its functions adequately; or
- (c) that there has been such a substantial decrease in the demand for the advanced education courses provided by a corporate college that the college has lost its viability,

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—*continued.*

he may recommend to the Governor that an administrator of the college be appointed.

Administrator—qualifications.

3. A person shall not be appointed as the administrator of a college unless he is, in the opinion of the Minister, experienced in, or has qualifications which are relevant to, the administration of higher education in New South Wales.

Governor may appoint administrator.

4. The Governor may, on the recommendation of the Minister under clause 2, by order published in the Gazette, appoint, on a date specified in the order, a person to be the administrator of a corporate college.

Transfer of functions to administrator.

5. On and from the appointed day for a corporate college—
- (a) the administrator shall (until the order by which he was appointed is revoked) have and may exercise and perform all the powers, authorities, duties and functions of the college and the council of the college; and
 - (b) the members of the council of the college shall cease to hold office as such.

Remuneration.

6. (1) Where an officer of a Department is appointed as an administrator, there is payable, in respect of the period of his appointment as administrator, by the college to the Department Head, for transmission to the Consolidated Revenue Fund, such costs and expenses in respect of the administration as the Minister determines.

Colleges of Advanced Education (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE COLLEGES OF ADVANCED EDUCATION ACT,
1975—continued.**

(2) Where a person who is not an officer of a Department is appointed as an administrator, there is payable, in respect of the period of his appointment as administrator, by the college to him such remuneration and expenses in respect of the administration as the Minister determines.

Regulations.

7. The regulations may make provision for or with respect to the functions of an administrator and, in particular, for or with respect to—

- (a) the accommodation, if any, to be provided at or by the college for the administrator; and
- (b) requiring servants of the college—
 - (i) to render all necessary assistance to the administrator in the exercise or performance of his powers, authorities, duties or functions in accordance with his appointment; and
 - (ii) not to obstruct the administrator in the exercise or performance of his powers, authorities, duties or functions.

Reconstitution of council.

8. The Minister may, upon the revocation of the order by which an administrator was appointed, appoint, by notification published in the Gazette, a council of a corporate college as if it were, for the purposes of this Act, the first council of the college.
