

MACQUARIE UNIVERSITY (AMENDMENT) ACT, 1984, No. 13

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 13, 1984.

An Act to amend the Macquarie University Act, 1964, to make further provision with respect to the investment of money by The Macquarie University, to enable the establishment and management of investment pools by the University and to validate certain matters. [Assented to, 31st May, 1984.]

Macquarie University (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 "Macquarie University (Amendment) Act, 1984".

Commencement.

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

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

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE MACQUARIE UNIVERSITY ACT, 1964.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 29, 1964.

4. The Macquarie University Act, 1964, is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions.

5. Schedule 2 has effect.

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SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE MACQUARIE UNIVERSITY ACT, 1964.

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

After the definition of "by-laws", insert:—

"class A funds" means—

- (a) private gifts, other than private gifts which may be applied without restriction or limitation—
 - (i) for any of the purposes of the University; or
 - (ii) for any of the purposes of any faculty, department, school or foundation within the University;
- (b) grants; and
- (c) student tuition fees;

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

(b) Section 3, definitions of "grant", "investment pool", "pooled item", "private gift", "securities"—

After the definition of "Council", insert:—

"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 investment pool established by the Council under section 21c (1);

"pooled item" means—

- (a) a private gift;
- (b) a grant;
- (c) student tuition fees;
- (d) class B funds;

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SCHEDULE 1—continued.**AMENDMENTS TO THE MACQUARIE UNIVERSITY ACT, 1964—continued.**

(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;

(2) Sections 21A–21E—

After section 21, insert:—

Trust instruments apply notwithstanding ss. 21B–21D.

21A. 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,

shall have effect notwithstanding sections 21B, 21C and 21D.

Investment of money.

21B. (1) The Council may invest any class A funds held by the University in accordance with and subject to the Trustee Act, 1925.

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SCHEDULE 1—continued.**AMENDMENTS TO THE MACQUARIE UNIVERSITY ACT, 1964—continued.**

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

- (a) in accordance with and subject to the Trustee Act, 1925;
- (b) in the same manner as the State Superannuation Board constituted by the Superannuation Act, 1916, may invest the State Superannuation Fund established under that Act or any part of that Fund—
 - (i) under section 5 (1) (a), (b), (b1) and (c1) of that Act (except that section 5 (1) (c1) of that Act shall not authorise or enable a loan other than a loan to a building society specified in Schedule 2 to the Permanent Building Societies Act, 1967);
 - (ii) under section 5A of that Act (except that section 5A (8) (d) of that Act shall not apply to any investment made by the Council);
 - (iii) with the approval of the Minister and the concurrence of the Treasurer, under section 5B of that Act (except that section 5B (1) (a) and (7) of that Act shall not apply to any investment made by the Council) and, subject to subsection (3), for the purposes of this section, a reference in section 5B (4) or (5) of that Act to the Board shall be read and construed as if it were a reference to the Council; or
 - (iv) with the approval of the Minister and the concurrence of the Treasurer, under section 5C of that Act, notwithstanding section 5C (3) of that Act (except that section 5C (4) (j) of that Act, to the extent to which it authorises investment other than by way of subscription of share capital in, deposit with, or loan of money to, a building society specified in Schedule 2 to the Permanent Building Societies Act, 1967, shall not apply to any investment made by the Council); or

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(c) in any prescribed manner.

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

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

Investment pools.

21c. (1) Subject to subsection (2), the Council may establish and maintain one or more investment pools for the collective investment of property held by the University.

(2) The Council may from time to time—

(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 shall be applied for a purpose other than the general purposes of the University; or

(ii) real property, other than real property in respect of which the donor has, in an instrument creating a trust in respect of that real property, specified that

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the income from that real property shall be applied for a purpose other than the general purposes of the University,

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

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

Distribution of income of investment pools.

21D. (1) The Council shall, at least once a year, distribute the income of an investment pool.

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

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

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

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

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

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

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

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

21E. (1) The inclusion in an investment pool of—

- (a) a pooled item being a private gift, a grant, student tuition fees or class B funds does not affect the identity of that pooled item as a private gift, a grant, student tuition fees or class B funds, as the case may be; and
- (b) a pooled item does not affect any trust to which that pooled item was subject immediately before its inclusion in that investment pool.

(2) On the withdrawal from an investment pool of—

- (a) a pooled item being a private gift, a grant, student tuition fees or class B funds, that pooled item shall continue to be subject to any trust to which it was subject immediately before its inclusion in that investment pool; and
- (b) money to the value attributed to any securities or real property by the Council under section 21C (2) (b), that money shall be subject to any trust to which those securities were subject immediately before their inclusion in that

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investment pool or that real property was subject immediately before its inclusion in that investment pool, as the case may be.

SCHEDULE 2.

(Sec. 5.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (2).

Validation—investment pools.

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

(2) A pool for the collective investment of any moneys, securities or real property established by The Macquarie University and in existence immediately before the appointed day shall, on and from that day, be deemed, subject to the Macquarie University Act, 1964, as amended by this Act, to be an investment pool lawfully constituted by the Council of that University under section 21c (1) of that Act, as so amended.

Reconstitution of investment pools.

3. (1) In this clause, “grant” and “private gift” have the meanings attributed to them respectively in section 3 of the Macquarie University Act, 1964, as amended by this Act.

(2) Where a pool referred to in clause 2 (2) contains the whole or any part of a private gift, other than a private gift which may be applied without restriction or limitation for any of the purposes of The Macquarie University, or the whole or any part of a grant and the whole or any part of the capital of that pool is invested

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in investments which are not made in accordance with and subject to the Trustee Act, 1925, then, except to the extent to which the investments in which the capital of that pool is invested are authorised or permitted under the terms of—

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

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

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