

COLLEGES OF ADVANCED EDUCATION (AMENDMENT) ACT,
1984, No. 152

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 152, 1984.

An Act to amend the Colleges of Advanced Education Act, 1975, with respect to the constitution of councils of corporate colleges, the acquisition of land for the purposes of that Act and the employment and related entitlements of certain servants of Riverina College of Advanced Education; and for other purposes. [Assented to, 10th December, 1984].

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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, 1984".

Commencement.

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

(2) Schedule 1, and section 5 in its application to that Schedule, 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.

Principal Act.

3. The Colleges of Advanced Education Act, 1975, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF CORPORATE COLLEGES.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

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SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

SCHEDULE 4.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 11, 1975.

5. The Principal Act is amended in the manner set forth in Schedules 1–3.

Savings, transitional and other provisions.

6. Schedule 4 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF
CORPORATE COLLEGES.

(1) Section 6 (1)—

Omit “twenty-five”, insert instead “23”.

(2) (a) Section 7 (1) (a)—

Omit “twenty-five”, insert instead “23”.

(b) Section 7 (2) (a) (ii)—

Omit “, or the full-time servants of the college who are the holders of the offices (not exceeding two),”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF
CORPORATE COLLEGES—*continued.*

(c) Section 7 (2) (b)—

Omit the paragraph, insert instead:—

- (b) members elected in the manner and by the persons prescribed by the by-laws in respect of each class of member, comprising—

- (i) 5 eligible servants of the college, consisting of—

- (A) 3 members of the academic staff;
- (B) 1 member of the non-academic staff; and
- (C) 1 member of either the academic or the non-academic staff, as prescribed by the by-laws,

having the qualifications prescribed by the by-laws either generally or in respect of each or any class of them;

- (ii) 2 students of the college having the qualifications prescribed by the by-laws for both or each of them; and

- (iii) 2 persons, other than servants or students of the college, who have received an academic award of the college on completion of an advanced education course or an award prescribed by the by-laws for the purposes of this subparagraph; and

(d) Section 7 (2) (c)—

Omit “appointed members, being persons (other than servants or students of the college)”, insert instead “appointed members (being 12 in number or, where regulations made for the purposes of subsection (1) (b) specify a greater number of members than 23, 12, plus the number of members by which the number so specified exceeds 23, in number)”.

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SCHEDULE 1—*continued*.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF
CORPORATE COLLEGES—*continued*.

(e) Section 7 (2A), (2B)—

After section 7 (2), insert:—

(2A) A servant (other than a servant whose service with the college is, in the terms of his or her employment by the college, expressed to be casual service) or a student of the college may not be appointed under subsection (2) (c).

(2B) In this section, “eligible servant”, in relation to a college, means a servant of the college other than one whose service with the college is, in the terms of his or her employment by the college, expressed to be part-time, casual or temporary service but includes a servant of the college whose service is classified by the by-laws as full-time or half-time.

(f) Section 7 (4) (b)—

Omit “—for a period of four years”, insert instead “, until the expiration of such period (not exceeding 4 years) as is specified in the instrument of appointment of that member”.

(g) Section 7 (5)—

Omit the subsection.

(3) Section 7A—

After section 7, insert:—

Graduate members of councils.

7A. For the purposes of section 7 (2) (b) (iii)—

(a) an academic award conferred under the common seal of a dissolved college, within the meaning of Schedule 2, shall be deemed—

(i) where it is or was conferred (in accordance with clause 10 of that Schedule) on a student transferred to a course or programme of study provided by

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SCHEDULE 1—*continued*.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF
CORPORATE COLLEGES—*continued*.

another college or educational institution—to be an academic award of the college or institution to which the student is or was transferred; or

- (ii) where it was conferred before the dissolution of the college—to be an academic award of a college, if any, specified as the appointed person in relation to the dissolved college by order made under clause 5 (1) of that Schedule or, where no college is so specified, to be an academic award of a college nominated by the Minister for the purposes of this section; and

- (b) an academic award conferred, on completion of an advanced education course, by an institution subsequently declared to be a college or constituted as a corporate college under section 4 shall be deemed to be an academic award of the college or corporate college.

(4) (a) Section 8 (1)—

Omit the subsection, insert instead:—

(1) A member (other than an official member) of the council of a corporate college shall be deemed to have vacated office if the member—

- (a) attains the age of 70 years;
- (b) dies;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

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SCHEDULE 1—*continued*.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF
CORPORATE COLLEGES—*continued*.

- (d) 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 an assignment of his or her estate for their benefit;
- (e) is convicted in New South Wales of a felony or of a misdemeanour punishable by imprisonment for 12 months or longer, or is convicted outside New South Wales of an offence which, if committed in New South Wales, would be a felony or misdemeanour so punishable;
- (f) resigns his or her office by writing under his or her hand addressed, in the case of an appointed member, to the Minister, or in the case of an elected member, to the principal officer of the college;
- (g) 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) being a member elected under section 7 (2) (b) (i), ceases to be an eligible servant, within the meaning of section 7, of the college or to hold the qualifications prescribed by the by-laws in respect of the member;
- (i) being a member elected under section 7 (2) (b) (ii), ceases to be a student of the college or to hold the qualifications prescribed by the by-laws in respect of the member;
- (j) being a member elected under section 7 (2) (b) (iii), becomes a servant or student of the college; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE COUNCILS OF
CORPORATE COLLEGES—*continued.*

- (k) being a member appointed under section 7 (2) (c), becomes a servant (other than a servant whose service with the college is, in the terms of his or her employment by the college, expressed to be casual service) or student of the college.

- (b) Section 8 (3)—

After “eligible”, insert “, if otherwise qualified,”.

- (5) Section 9 (2)—

Omit the subsection, insert instead:—

(2) At any meeting of the members of the council of a corporate college one half (or where one half is not a whole number the whole number next higher than one half) of the total number of members for the time being of the council shall form a quorum.

- (6) Section 23 (1) (h)—

Omit the paragraph.

SCHEDULE 2.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 5C—

After section 5B, insert:—

Servants of Riverina College of Advanced Education.

5C. Schedule 4 has effect.

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SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 10 (1) (h), (i)—

At the end of section 10 (1) (h), insert:—

; and

- (i) may engage in such activities relating to advanced education as it deems desirable and as are consistent with the promotion of the purposes and interests of the college.

(3) Section 10A—

After section 10, insert:—

Powers of corporate college over certain land.

10A. (1) Where any real or personal property used for the conduct of a corporate college is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the corporate college has, by its council, the control and management of that real or personal property and is, by its council, responsible for its maintenance.

(2) Except to the extent that subsection (3) otherwise provides, nothing in subsection (1) enables a corporate college to alienate, mortgage, charge or demise any land or interest in land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).

(3) A corporate college may, on behalf of the Crown or a Minister of the Crown, as the case may require, lease land of which, pursuant to subsection (1), it has the control and management, subject to the lease being for a term not exceeding 21 years and including a condition providing for forfeiture of the lease and re-entry by the lessor if the lease is assigned.

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SCHEDULE 2—*continued*.

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued*.

(4) A corporate college is, in the exercise of any of its functions under this section, subject to the control and direction of the Minister.

(4) (a) Section 14 (1)—

Omit “a corporate college”, insert instead “this Act”.

(b) Section 14 (1A)—

After section 14 (1), insert:—

(1A) The Minister may, for the purposes of this Act, acquire land, including land previously appropriated or resumed for any purpose, by purchase, acceptance of transfer or conveyance.

(c) Section 14 (2)—

Omit “subsection (1) unless he”, insert instead “subsection (1) in respect of the resumption or appropriation of land for the purposes of a corporate college unless the Minister”.

(5) (a) Section 17 (4)—

After “section”, insert “by the Minister”.

(b) Section 17 (5), (6)—

After section 17 (4), insert:—

(5) Subject to subsections (4) and (6), a college may fix fees to be charged by the college, including fees in respect of—

- (a) admission to the college;
- (b) examinations;
- (c) residential facilities provided by the college;

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- (d) courses or programmes of study other than advanced education courses;
- (e) the conferring of awards;
- (f) the provision of amenities and services, whether or not of an academic nature; or
- (g) an organisation of students or of students and other persons.

(6) A college is, in the exercise of its power to fix fees under this section, subject to the control and direction of the Minister.

(6) Section 21—

Omit the section, insert instead:—

Annual report.

21. (1) This section applies to an institution (being a college or other institution) that conducts an advanced education course, but does not apply to an institution to which the Annual Reports (Statutory Bodies) Act, 1984, applies.

(2) As soon as practicable after 1st January, but on or before 30th June, in each year, an institution to which this section applies shall prepare and forward—

- (a) to the Minister; and
- (b) where the institution forms part of a Department of the Government not administered by the Minister—to the Minister administering that Department,

a report of its work and activities in relation to advanced education courses for the 12 months ending on 31st December in the preceding year.

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SCHEDULE 2—*continued*.

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued*.

(3) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(7) (a) Section 23 (1) (a1)—

After section 23 (1) (a), insert:—

(a1) the management and good government of the college;

(b) Section 23 (1) (c)—

Omit “the management and good government of the college,”.

(c) Section 23 (1) (t), (u)—

At the end of section 23 (1) (t), insert:—

; and

(u) the exemption of persons specified or described in the by-laws from the payment of fees.

(d) Section 23 (3)—

Omit the subsection, insert instead:—

(3) A by-law made by the council of a college—

(a) shall be sealed with the seal of the college and be submitted for the consideration and approval of the Governor; and

(b) for the purposes of section 41 (V) of the Interpretation Act, 1897, is required to be approved by the Governor.

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SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Schedule 4—

After Schedule 3, insert:—

SCHEDULE 4.

(Sec. 5c.)

SERVANTS OF RIVERINA COLLEGE OF ADVANCED EDUCATION.

Interpretation.

1. In this Schedule—

“affected servant” means an eligible servant transferred to a position by an order made under clause 3;

“College” means Riverina College of Advanced Education;

“commencement date” means the date of assent to the Colleges of Advanced Education (Amendment) Act, 1984;

“effective day”, in relation to an eligible servant, means—

- (a) in the case of a servant referred to in paragraph (b) (i) of the definition of “eligible servant”—the day specified in respect of the servant in an order made under clause 3; and
- (b) in the case of a servant referred to in paragraph (b) (ii) of the definition of “eligible servant”—1st May, 1984;

“eligible servant” means a person who—

- (a) was, on 30th April, 1984, employed at the Goulburn campus of the College; and
- (b) since 1st May, 1984, has been and is, on the commencement date—
 - (i) a servant of the College; or
 - (ii) a servant of the College employed as a temporary employee of the Public Service;

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SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*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.

Arrangements relating to servants.

2. (1) The Minister may, with—

(a) the concurrence of the Public Service Board or the Education Commission of New South Wales, as the case may require; and

(b) subject to subclause (2), the agreement of the eligible servant concerned,

recommend the making, before 31st December, 1986, of an order under clause 3.

(2) The Minister may make a recommendation under this clause in relation to a servant referred to in paragraph (b) (ii) of the definition of "eligible servant" in clause 1—

(a) where the servant has died or retired; or

(b) in such other circumstances as the Minister considers appropriate,

without the agreement of that servant.

Transfer, etc., of servants.

3. (1) The Governor, on the recommendation of the Minister, may by order published in the Gazette transfer an eligible servant specified in the order to a position in—

(a) the Public Service; or

(b) a Teaching Service.

SCHEDULE 2—continued.**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.**

(2) An eligible servant specified in an order under this clause becomes, or shall be deemed to have become, on the effective day in respect of that servant—

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

in accordance with the terms of the order.

(3) Where an order under this clause relates to an eligible servant employed as a temporary employee of the Public Service, the transfer of that eligible servant to a position in the Public Service by the order operates to continue the employment of that eligible servant in the Public Service.

(4) The provisions of this clause have effect notwithstanding anything in the Public Service Act, 1979, or the Education Commission Act, 1980, and an affected servant shall be deemed to have been transferred in accordance with the relevant provisions of those Acts.

Remuneration.

4. An affected servant shall be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the affected servant immediately before the effective day as a servant of the College, 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 the affected servant's salary is, or the affected servant's wages or allowances are, varied or altered by an award of a competent tribunal, an industrial agreement, the employer to which the affected servant is transferred or otherwise in accordance with law.

Superannuation.

5. (1) Subject to subclause (2), where an affected servant was, immediately before the effective day, a contributor to a superannuation scheme, the affected servant—

- (a) shall retain any rights accrued or accruing to the affected servant as such a contributor; and

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(b) may continue to contribute to any superannuation scheme to which the affected servant was a contributor immediately before the effective day, as if the affected servant had continued to be a servant of the College during the affected servant's service with the employer to which the affected servant is transferred, and—

(c) the affected servant's service with the employer to which the affected servant is transferred shall be deemed to be service with the College for the purposes of any law under which those rights accrued or were accruing or under which the affected servant continues to contribute; and

(d) the affected servant shall be deemed to be a servant of the College for the purposes of any superannuation scheme to which, by the operation of this subclause, the affected servant is entitled to contribute.

(2) A person who, but for this subclause, would be entitled under subclause (1) to contribute to a superannuation scheme shall not be so entitled upon the person becoming a contributor to any other superannuation scheme, and the provisions of subclause (1) (d) cease to apply to or in respect of the person in any case where the person becomes a contributor to another superannuation scheme.

(3) Subclause (2) does not prevent payment to an affected servant, upon the affected servant's ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to the affected servant if the affected servant had ceased, by reason of resignation, to be a contributor.

(4) Where, pursuant to subclause (1) (b), an affected servant continues to contribute to a superannuation scheme, the employer to which the affected servant is transferred shall contribute to that superannuation scheme the same amount as would have been payable by the College if that person had remained a servant of the College and been paid salary or wages at the rate paid to the affected servant by the employer to which the servant is transferred.

(5) This clause applies to or in respect of the preservation of rights of those affected servants who, but for the operation of this clause, would not be entitled to retain those rights.

Leave.

6. (1) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of an affected servant with the College shall be deemed to be service with the employer to which the servant is transferred.

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SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) For the purpose of calculating the entitlement of an affected 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 affected 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 affected servant before that time.

(3) Subject to subclause (4), an affected servant shall retain any right to annual leave accrued to the affected servant in respect of the service of the affected servant with the College.

(4) An affected servant appointed as a member of a Teaching Service shall not retain any right to annual leave accrued to the person as a servant of the College but shall, instead of that right, be paid by the College the monetary equivalent of the annual leave the right to which the person would, but for this subclause retain, calculated by reference to the salary or wages payable to the person immediately before the effective day.

Effect of certain other Acts.

7. (1) An affected servant is not entitled to claim, both under this Schedule and any other Act, benefits in respect of the same period of service.

(2) Nothing in this Schedule affects the operation of the Industrial Arbitration Act, 1940.

Validation.

8. The provisions of clauses 4–6 shall be deemed to have effect on and from 1st May, 1984, in relation to the remuneration, superannuation and leave entitlements of an eligible servant (within the meaning of paragraph (b) of the definition of “eligible servant” in clause 1) as if that servant were a servant in respect of whom an order under clause 3 had been made after the commencement date and any act, matter or thing done, between 1st May, 1984, and the commencement date, as if those clauses had effect in respect of the servant, is hereby validated.

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SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

- (1) (a) Section 7 (3)—
Omit “seventy”, insert instead “70”.
- (b) Section 7 (4) (a) (i)—
Omit “four”, insert instead “4”.
- (c) Section 7 (4) (a) (i)—
Omit “he”, insert instead “that member”.
- (2) Section 8 (2) (b), (3)—
After “his” wherever occurring, insert “or her”.
- (3) Schedule 2, clause 8 (12)—
Omit “Revenue”.
- (4) Schedule 3, clause 6 (1)—
Omit “Revenue”.
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SCHEDULE 4.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule—
- “appointed day” means the day appointed and notified under section 2 (2);
- “established college” means a corporate college constituted before the appointed day;
- “operative day”, in relation to an established college, means the day specified in an order in relation to the college made under clause 2.

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SCHEDULE 4—continued.**SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—continued.****Transitional.**

2. Notwithstanding anything in this Act, the amendments made to the Principal Act by Schedule 1 to this Act shall not have effect in relation to an established college, until such day (being a day that is not earlier than the appointed day) as is specified by the Minister in relation to that college by order made under this clause and published in the Gazette.

Election and appointment of members before operative day.

3. (1) For the purpose only of enabling a council of an established college to be constituted in accordance with the Principal Act, as amended by this Act, on or after (but not before) the operative day for the college, members of the council may be elected or appointed under section 7 of the Principal Act, as so amended, and any other act, matter or thing may be done, before that day, as if the whole of this Act commenced on the date of assent to this Act and as if the amendments referred to in clause 2 had effect in relation to the college as from that date.

(2) Where, by reason of the operation of subclause (1), a member of the council of an established college is elected under section 7 (2) (b) of the Principal Act, as amended by this Act, before the operative day for the college, the member shall accede to the office to which the member is elected upon that day.

Vacation of office and re-election of elected members.

4. A member of the council of an established college elected under section 7 (2) (b) of the Principal Act and holding office immediately before the operative day for the college shall vacate office on that day but is eligible, if otherwise qualified, for re-election, whether before or after the operative day, under the Principal Act, as amended by this Act.

Saving of ministerial appointments to council before operative day.

5. (1) A member of the council of a corporate college appointed pursuant to section 7 (2) (c) of the Principal Act and holding office immediately before the operative day for the college shall, in respect of so much of the term of the office as occurs after the operative day for the college, be deemed to have been appointed pursuant to section 7 (2) (c) of the Principal Act, as amended by this Act.

(2) The provisions of subclause (1) apply notwithstanding that the continuance in office of the member results in the council to which the member is deemed to be appointed consisting of more than 23 members and the council shall nevertheless be deemed to be duly constituted in accordance with section 7 (1) (a) of the Principal Act, as amended by this Act.

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SCHEDULE 4—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Vacation of office provision not to apply to certain ministerial appointments to council.

6. Section 8 (1) (k) of the Principal Act, as amended by this Act, does not apply in relation to the office held by a member of the council of a corporate college deemed to be appointed under section 7 (2) (c) of the Principal Act, as amended by this Act, by the operation of clause 5.

By-laws.

7. The amendment of section 23 (1) (c) of the Principal Act by this Act does not affect the operation on and after the date of assent to this Act by any by-law made under that section and in force immediately before that date.
