

**NEW SOUTH WALES STATE CONSERVATORIUM OF
MUSIC (AMENDMENT) ACT 1986 No. 217**

NEW SOUTH WALES



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**NEW SOUTH WALES STATE CONSERVATORIUM OF MUSIC
(AMENDMENT) ACT 1986 No. 217**

NEW SOUTH WALES



Act No. 217, 1986

An Act to amend the New South Wales State Conservatorium of Music Act 1965 so as to reconstitute the Board of Governors of the Conservatorium and for other purposes. [Assented to 23 December 1986]

New South Wales State Conservatorium of Music (Amendment) 1986

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 "New South Wales State Conservatorium of Music (Amendment) Act 1986".

Commencement

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Schedule 1, and section 4 in its application to that Schedule, shall commence on 1 February 1987.

(3) For the purpose only of enabling the Board of Governors of the Conservatorium to be constituted in accordance with the Principal Act, as amended by this Act, by-laws may be made under that Act, elections may be held and any other action may be taken as if the whole of this Act had commenced on the date of assent.

Principal Act

3. The New South Wales State Conservatorium of Music Act 1965 is referred to in this Act as the Principal Act.

Amendment of Act No. 5, 1965

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Savings and transitional provisions

5. Schedule 3 has effect.

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SCHEDULE 1

(Sec. 4)

AMENDMENTS RELATING TO THE RECONSTITUTION OF THE
BOARD OF GOVERNORS OF THE CONSERVATORIUM

(1) Section 4—

Omit the section, insert instead:

Constitution of the Board

4. (1) The Board shall consist of 17 members comprised of—

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

(2) The official members shall be—

- (a) the person for the time being holding or acting in the office of Director;
- (b) the person for the time being holding or acting in the office of Principal, Newcastle Branch of the Conservatorium of Music; and
- (c) the person for the time being holding or acting in the office prescribed by the by-laws for the purposes of this paragraph.

(3) The elected members shall consist of—

(a) 2 members of the staff of the Conservatorium who—

- (i) have the prescribed qualifications which may be the same for both of them or different for each of them; and
- (ii) are elected as prescribed, whether that prescription is the same for both of them or different for each of them;

(b) a student of the Conservatorium who—

- (i) has the prescribed qualification; and
- (ii) is elected as prescribed; and

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SCHEDULE 1—*continued*

AMENDMENTS RELATING TO THE RECONSTITUTION OF THE
BOARD OF GOVERNORS OF THE CONSERVATORIUM—*continued*

- (c) a graduate of the Conservatorium who is elected by the graduates of the Conservatorium as prescribed.
- (4) The appointed members shall consist of—
 - (a) 9 persons appointed by the Minister, being persons whom the Minister considers to be suitable for appointment after consultation with such persons as the Minister considers appropriate; and
 - (b) 1 person appointed by the Minister from among officers of the Public Service employed in a Department of the Government administered by the Minister.
- (5) An elected member shall, subject to this Act, hold office until—
 - (a) the expiration of such period not exceeding 4 years as is prescribed in respect of the member; or
 - (b) the election of a successor to the member,whichever occurs later.
- (6) An appointed member shall, subject to this Act, hold office for such period not exceeding 4 years as may be specified in the instrument of appointment or, if no period is so specified, for a period of 4 years commencing on the date of appointment.
- (7) A person is not eligible to be elected or appointed as a member if the person is of or above the age of 70 years.
- (8) The provisions of the Public Service Act 1979 do not apply to or in respect of the appointment of a member and a member is not, as a member, subject to those provisions.
- (9) Whether or not a person is to be treated as a student or graduate of the Conservatorium for the purposes of this section may be determined by the by-laws.

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SCHEDULE 1—*continued*

AMENDMENTS RELATING TO THE RECONSTITUTION OF THE
BOARD OF GOVERNORS OF THE CONSERVATORIUM—*continued*

(2) Section 5 (Casual vacancies)—

(a) Section 5 (1)—

Omit “a member referred to in subsection (1) (c) or (d)”, insert instead “an official member”.

(b) Section 5 (1) (h)—

Omit “a member referred to in section 4 (2) (a)”, insert instead “an elected member referred to in section 4 (3) (a)”.

(c) Section 5 (1) (i)—

Omit “member referred to in section 4 (2) (b)”, insert instead “elected member referred to in section 4 (3) (b)”.

(d) Section 5 (1) (j)—

Omit “a member referred to in section 4 (2) (d) or (e)”, insert instead “the appointed member referred to in section 4 (4) (b)”.

(e) Section 5 (2)—

Omit “from office a member referred to in section 4 (2) (d) or section 4 (3)”, insert instead “an appointed member from office”.

(f) Section 5 (3) (a)—

Omit “Minister appointing”, insert instead “election or appointment of”.

(g) Section 5 (3) (b)—

Omit “for appointment in the same way as the member who vacated his office”, insert instead “to be elected or appointed to the office vacated”.

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SCHEDULE 1—*continued*

AMENDMENTS RELATING TO THE RECONSTITUTION OF THE
BOARD OF GOVERNORS OF THE CONSERVATORIUM—*continued*

(3) Section 7 (**Procedure, quorum, etc.**)—

Section 7 (3)—

Omit the subsection, insert instead:

(3) At any meeting of the members of the Board 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 Board shall form a quorum.

SCHEDULE 2

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 2 (**Interpretation**)—

(a) Section 2, 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 Board; or

(ii) for any of the purposes of any faculty, department, school or other body within the Conservatorium;

(b) grants; and

(c) student tuition fees.

“Class B funds” means moneys held by the Board which are not class A funds.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 2, definitions of “Grant”, “Investment pool”—

After the definition of “Director”, insert:

“Grant” means money granted to the Board 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 Board under section 14B (1).

(c) Section 2, definitions of “Pooled item”, “Private gift”, “Securities”—

Omit the definition of “Prescribed”, insert instead:

“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 Board;

(b) money obtained from the conversion of property given to the Board; and

(c) money obtained from the investment or use of property given to the Board.

“Securities” means debentures, stocks, shares, bonds and notes.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) Section 2 (2)—

At the end of section 2, insert:

(2) 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.

(2) Section 7 (**Procedure, quorum, etc.**)—

Section 7 (2)—

Omit “and perform all the powers, authorities, duties and”, insert instead “all the”.

(3) Section 10 (**Common seal**)—

Section 10 (1)—

Omit the subsection, insert instead:

- (1) The common seal of the Board shall not be used except upon a resolution of the Board or as authorised by the by-laws.

(4) Section 11—

Omit the section, insert instead:

Director and staff of Conservatorium

11. (1) For the purposes of this Act—

- (a) a Director of the Conservatorium; and
- (b) such other staff as may be necessary to enable the Board to exercise its functions,

may be employed under the Public Service Act 1979.

- (2) The Director shall be the chief executive officer of the Board.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(3) The Board may employ such teachers, musicians and other persons as the Board considers appropriate to enable it to exercise its functions.

(4) Except in so far as provision is otherwise made by law, the conditions of employment (including remuneration) of staff employed under subsection (3) shall be such as are from time to time determined by the Board after consultation with the Public Service Board.

(5) Where a written contract setting out conditions of employment is expressed to have been entered into under subsection (3) by the Board, those conditions shall, for the purposes of any proceedings relating to the legality of the contract, be deemed to have been determined in accordance with subsection (4).

(6) The Public Service Act 1979 does not apply to or in respect of the employment of staff under subsection (3) and a person is not, as a member of the staff employed under that subsection, subject to that Act.

(7) The Board may, under and subject to section 80 of the Public Service Act 1979, temporarily employ a person.

(8) For the purposes only of subsection (7), section 80 of the Public Service Act 1979 applies as if—

- (a) references in that section to a Department Head were references to the Board; and
- (b) references in that section to work in the Department were references to work for the purpose of furthering the objects of the Board.

(5) Section 12 (**Objects and functions of Board**)—

(a) Section 12 (1)—

Omit “and perform”.

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 12 (1)—

Omit “powers, authorities, duties and” wherever occurring.

(c) Section 12 (1) (a)—

Omit section 12 (1) (a) and (b), insert instead:

(a) as its principal objects—

(i) the achievement of excellence in the teaching of music; and

(ii) the provision of a practical musical education at the highest standard for those who have exceptional musical talent and an aptitude for the profession of music;

(d) Section 12 (1) (b)—

From section 12 (1) (c), omit “(c) ministering to the needs and demands of the community in any or”, insert instead “(b) providing for the needs of the community in”.

(e) Section 12 (1) (c)—

From section 12 (1) (d), omit “(d)”, insert instead “(c)”.

(f) Section 12 (1) (d), (e)—

After section 12 (1) (c) (as re-lettered), insert:

(d) subject to the approval of the Minister, the establishment, maintenance and control, whether or not by agreement with any person, of branches of the Conservatorium within New South Wales;

(e) the administration, care, control, management and maintenance of the Conservatorium and its branches and, subject to any agreement referred to in paragraph (d), of all books, manuscripts, instruments and other property contained in the Conservatorium or its branches;

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SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(g) Section 12 (1) (f), (g)—

From section 12 (1) (e) and (f), omit “(e)” and “(f)” respectively, insert instead “(f)” and “(g)” respectively.

(h) Section 12 (3)—

Omit the subsection.

(6) Section 12A—

After section 12, insert:

Political or religious discrimination prohibited

12A. No political or religious test shall be administered to any person in order to entitle the person to be admitted as a student, or to hold office, at the Conservatorium, or to be eligible to receive any academic award or to enjoy any benefit, advantage or privilege relating to the Conservatorium.

(7) Sections 14–14D—

Omit section 14, insert instead:

Trust instruments apply notwithstanding ss. 14A–14C

14. 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 Board—any instrument creating a trust with respect to that property,

shall have effect notwithstanding sections 14A, 14B and 14C.

Investment of money

14A. (1) The Board may invest any class A funds held by the Board in accordance with and subject to the Trustee Act 1925.

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

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

- (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 Board);
 - (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 Board) 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, within the meaning of that Act, shall be read and construed as if it were a reference to the Board; 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 Board); or
- (c) in any prescribed manner.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

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

(4) The Board 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 Board 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

14B. (1) Subject to subsection (2), the Board may establish and maintain one or more investment pools for the collective investment of property held by the Board.

(2) The Board 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 Board; 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 Board; 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 shall be applied for a purpose other than the general purposes of the Board,

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

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

(3) Notwithstanding subsections (1) and (2), the Board 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

14C. (1) The Board 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 Board 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 Board; or
 - (ii) specified that that private gift shall be applied for a purpose other than the general purposes of the Board 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 Board is otherwise required to do so,

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 Board 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.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(3) Where the Board 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

14D. (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 Board under section 14B (2) (b), that money shall be subject to any trust to which those securities were subject immediately before their inclusion in that investment pool or that real property was subject immediately before its inclusion in that investment pool, as the case may be.

(8) Section 15A (**Delegation by Board**)—

(a) Section 15A—

Omit “or performance” wherever occurring.

(b) Section 15A—

Omit “power, authority, duty or” wherever occurring.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 15A (1) (a)—

Omit “and”.

(d) Section 15A (1) (b), (c)—

At the end of section 15A (1) (b), insert:

; or

(c) the functions of the Board under section 80 of the Public Service Act 1979 conferred by section 11 (7).

(9) Sections 16, 17—

Omit section 16, insert instead:

By-laws

16. (1) The Board may make by-laws, not inconsistent with this Act, for or with respect to any matter that by this Act 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 general management and control of the Conservatorium or any branch of it;
- (b) the election of the elected members of the Board and their terms of office and the election of a person to preside at meetings of the Board and a deputy for that person and their terms of office;
- (c) the conduct of the proceedings of the members of the Board, including the times, places and conduct of their meetings;
- (d) the membership, appointment and functions of committees and boards to operate within the Conservatorium, whether or not they are to be established by the Board;
- (e) the quorum for a meeting, and the conduct of and presiding over of meetings, of any such committee or board;

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (f) the custody and use of the common seal of the Board;
- (g) the functions of the Director;
- (h) the conduct of students at the Conservatorium and the imposition of penalties for breaches of discipline by those students;
- (i) the examinations for, and the granting of, fellowships, scholarships and bursaries;
- (j) the conferring of prizes and awards, the conduct of examinations and the acceptance of specified qualifications as the equivalent of specified examination results;
- (k) the progression of students in their courses;
- (l) the admission of students of other educational institutions to any status within the Conservatorium;
- (m) the conferring on graduates of other educational institutions, or on other persons, of academic awards without examination;
- (n) the establishment and membership of a convocation;
- (o) the admission (including charges for admission) or exclusion of students or members of the public to or from the Conservatorium or any part of it or any branch of the Conservatorium or any part of the branch;
- (p) the conditions under which any services may be granted or received, including conditions requiring the payment of fees or other charges;
- (q) the exemption of persons specified or described in the by-laws from the payment of fees or other charges; and
- (r) the affiliation with the Conservatorium of any other institution concerned in education or research.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Any by-law made with respect to any branch of the Conservatorium shall be subject to any agreement referred to in section 12 (1) with respect to that branch.

(3) The by-laws may provide for empowering the Board or the Director, subject to any restrictions and conditions specified in the by-laws, to make rules (not inconsistent with this Act or a by-law) for regulating, or providing for the regulation of, a specified matter that is a matter with respect to which by-laws may be made or for carrying out and giving effect to the by-laws, but this subsection does not authorise the making of a rule which creates an offence.

(4) A provision of a by-law may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body.

or may do any combination of those things.

(5) A by-law may create an offence punishable by a penalty not exceeding \$500.

(6) Every by-law shall be sealed with the common seal of the Board and shall not take effect unless it has been approved by the Governor.

(7) Section 41 of the Interpretation Act 1897 applies in respect of a by-law as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

Proceedings for offences

17. Proceedings for an offence against the by-laws shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

SCHEDULE 3

(Sec. 5)

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“Board” means the Board of Governors of the Conservatorium.

Transitional arrangements for members of the Board

2. (1) In this clause—

“appointed day” means 1 February 1987.

(2) A member of the staff of the Conservatorium—

(a) who was elected, before the appointed day, under section 4 (2) (a) (ii) of the Principal Act; and

(b) who has not, before that day, acceded to the office of a member of the Board as a consequence of that election,

shall be deemed to have been elected as a member of the Board under section 4 (3) (a) (ii) of the Principal Act, as amended by this Act, so as to accede to that office on that day.

(3) A student of the Conservatorium—

(a) who was elected, before the appointed day, under section 4 (2) (b) (ii) of the Principal Act; and

(b) who has not, before that day, acceded to the office of a member of the Board as a consequence of that election,

shall be deemed to have been elected as a member of the Board under section 4 (3) (b) (ii) of the Principal Act, as amended by this Act, so as to accede to that office on that day.

New South Wales State Conservatorium of Music (Amendment) 1986

SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(4) Except as provided by section 4 (2) of the Principal Act, as amended by this Act, a person holding office as a member of the Board immediately before the appointed day shall vacate that office on that day.

(5) Subclause (4) does not prevent a person to whom it relates from being elected or appointed so as to hold office as a member of the Board for a term commencing on or after the appointed day.

Election and appointment of certain members of the Board

3. As soon as practicable after the date of assent to this Act, appointments shall be made, and elections shall be held in accordance with the by-laws made under the Principal Act, for the purpose of constituting the Board in accordance with the Principal Act, as amended by this Act.

Employment of certain persons

4. An amendment made to the Principal Act by this Act does not affect the appointment or terms or conditions of employment of a person who was, immediately before the date of assent to this Act, employed under section 11 (4) of the Principal Act by the Board.
