

SOUTHERN CROSS UNIVERSITY ACT 1993 No. 69

NEW SOUTH WALES



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SOUTHERN CROSS UNIVERSITY ACT 1993 No. 69

NEW SOUTH WALES



Act No. 69, 1993

An Act to establish the Southern Cross University and to provide for its constitution and functions; and for other purposes. [Assented to 9 November 1993]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Southern Cross University Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

“**Council**” means the Council of the University;

“**University**” means the Southern Cross University established by this Act.

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

- (a) the University; or
- (b) any former institution that is currently a part of the University (having become a part of the University or any predecessor of the University pursuant to the Higher Education (Amalgamation) Act 1989 or otherwise); or
- (c) any predecessor of the University or of any institution referred to in paragraph (b).

- (3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—CONSTITUTION AND FUNCTIONS OF THE UNIVERSITY**Establishment of University**

4. A University is established by this Act, consisting of:
 - (a) a Council; and

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

Incorporation of University

5. The University is a body corporate under the name of the Southern Cross University.

Functions of University

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

- (a) the provision of educational facilities of university standard, having particular regard to the needs of the north coast region of the State; and
- (b) the preservation, extension and dissemination of knowledge through scholarship, research, creative works, consultancy and internal and external teaching; and
- (c) the conferring of the degrees of Bachelor, Master and Doctor and the awarding of diplomas and other certificates and awards.

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

University to collaborate with University of New South Wales

7. The University is to collaborate with the University of New South Wales in the development of the academic programs to be offered by the University, until the Minister otherwise directs.

Facilities to be provided for students

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

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

The Council

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

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

Constitution of Council

- 10. (1)** The Council is to consist of:
- (a) parliamentary members; and
 - (b) official members; and
 - (c) appointed members; and
 - (d) elected members.
- (2)** The parliamentary members comprise:
- (a) one Member of the Legislative Council elected by that Council:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each periodic Council election within the meaning of section 3 of the Constitution Act 1902; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant; and
 - (b) one Member of the Legislative Assembly elected by that Assembly:
 - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each general election of Members of the Legislative Assembly; or
 - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant.
- (3)** The official members comprise:
- (a) the Chancellor (if the Chancellor is not otherwise a member of the Council); and
 - (b) the Vice-Chancellor; and
 - (c) the person for the time being holding the office of:
 - (i) presiding member of the Academic Board (if that person is not the Vice-Chancellor); or
 - (ii) deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor).
- (4)** The appointed members comprise:
- (a) 2 persons appointed by the Minister, being persons nominated by the Council of the University of New South Wales; and

- (b) 6 persons appointed by the Minister with, as far as practicable, at least one person appointed from each of the following categories:
- persons experienced in the field of education or the arts;
 - persons experienced in technology, industry, commerce or industrial relations;
 - persons who are practising, or have practised, a profession;
 - persons associated with the north coast region of the State.

(5) The elected members comprise:

(a) 2 persons:

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

(b) one person:

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

(c) one person:

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

(6) The Council may appoint any other person who is neither a student nor a member of staff of the University to be a member of the Council and the person, on being appointed, is to be taken to be an appointed member of the Council in addition to the members appointed under subsection (4).

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

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

Chancellor

11. (1) The Council is to elect a person (whether or not a member of the Council) to be the Chancellor of the University, and is to do so:

- (a) at its first meeting or as soon as practicable thereafter; and
- (b) whenever a vacancy in the office of Chancellor occurs.

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

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

Deputy Chancellor

12. (1) The Council is to elect one of its members to be the Deputy Chancellor of the University, and is to do so:

- (a) at its first meeting or as soon as practicable thereafter; and
- (b) whenever a vacancy in the office of Deputy Chancellor occurs.

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

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

Vice-Chancellor

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

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

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

Visitor

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

Academic Board

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

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

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

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

16. (1) The Council:

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

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

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

Delegation by Council

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

Division 2—Property

Powers of Council relating to property

18. (1) The Council:

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

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

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

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

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

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

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

Powers of Council over certain property vested in Crown

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

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

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

(4) Such a lease:

- (a) is to be for a term not exceeding 21 years; and
- (b) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.

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

(6) This section does not apply to land used for the conduct of a campus of the University at Coffs Harbour pursuant to arrangements referred to in section 22 (Provision of joint education facility at Coffs Harbour).

Acquisition of land

20. (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) The Minister may do so only if the University:

- (a) applies to the Minister for acquisition of the land; and
- (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

(3) For the purposes of the Public Works Act 1912, any acquisition of land under this section is taken to be for an authorised work and the

Minister is, in relation to that authorised work, taken to be the Constructing Authority.

(4) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this section.

Grant or transfer of certain land to University

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

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

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

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

PART 5—GENERAL

Provision of joint education facility at Coffs Harbour

22. (1) The University may enter into arrangements with the TAFE Commission, the Minister administering the Education Reform Act 1990 and the Director-General of School Education for the purpose of the provision of university education, technical and further education and senior secondary schooling at a university campus, TAFE college and school comprising a joint facility at Coffs Harbour.

(2) For the purposes of the arrangements, the joint facility may be established as a campus of the University, a TAFE college and a school.

Advance by Treasurer

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

Financial year

24. The financial year of the University is:

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

No religious test or political discrimination

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

Exemption from membership of body corporate

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

Re-appointment or re-election

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

Seal of University

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

By-laws

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

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

- (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Board;
- (e) the functions of the presiding member of the Council or Academic Board;
- (f) the conduct and record of business of the Council or Academic Board;
- (g) the appointment of committees of the Council or Academic Board;
- (h) the quorum and functions of committees of the Council or Academic Board;
- (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor;
- (j) the tenure of office, stipend and functions of the Vice-Chancellor;
- (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise;
- (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University;
- (m) admission to, enrolment in and exclusion from courses of studies;
- (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of any of the following:
 - (i) entrance to the University;
 - (ii) tuition;
 - (iii) lectures and classes;
 - (iv) examinations;
 - (v) residence;
 - (vi) the conferring of degrees and the awarding of diplomas and other certificates and awards;
 - (vii) the provision of amenities and services, whether or not of an academic nature;
 - (viii) an organisation of students or of students and other persons;
- (o) the exemption from, or deferment of, payment of fees and charges, including fines;
- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements;

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

Rules

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

(2) Any such rule:

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

Recovery of charges, fees and other money

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

Savings and transitional provisions

32. Schedule 3 has effect.

Amendment of Act etc.

33. (1) The Public Finance and Audit Act 1983 is amended by inserting, in alphabetical order in Schedule 2 (**Statutory bodies**) the words “Council of the Southern Cross University.”

(2) The Public Authorities (Financial Arrangements) Investment Powers Regulation 1990 is amended by inserting in Schedule 2 (**Authorities declared to have Part 2 investment powers**) in alphabetical order the words “Southern Cross University”.

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

(Sec. 10)

Term of office

1. Subject to this Act, a member of the Council holds office:
 - (a) in the case of a parliamentary member, until a member of the House of Parliament that elected the member is elected as a replacement; and
 - (b) in the case of an official member, while, the member holds the office by virtue of which he or she is a member; and
 - (c) in the case of an appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment; and
 - (d) in the case of an elected member referred to in section 10 (5) (a), (b) or (c), for such term (not exceeding 3 years) as may be prescribed by the by-laws.

Vacation of office

2. The office of a member of the Council becomes vacant if the member:
 - (a) dies; or
 - (b) declines to act; or
 - (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of the parliamentary member who is a Member of the Legislative Council, to the President of the Legislative Council; or
 - (ii) in the case of the parliamentary member who is a Member of the Legislative Assembly, to the Speaker of the Legislative Assembly; or
 - (iii) in the case of an appointed member (other than a member appointed by the Council under section 10 (6)), to the Minister; or
 - (iv) in the case of an elected member or a member appointed by the Council under section 10 (6), to the Vice-Chancellor; or
 - (d) in the case of an appointed or elected member, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her remuneration for their benefit; or

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

- (e) in the case of an appointed or elected member, becomes a mentally incapacitated person; or
- (f) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
- (g) in the case of an appointed or elected member, is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence; or
- (h) in the case of the parliamentary member elected by the Legislative Council:
 - (i) ceases to be a Member of that Council otherwise than by reason of section 22B (1) (c) of the Constitution Act 1902; or
 - (ii) ceases to be a Member of that Council by reason of section 22B (1) (c) of that Act and does not become a candidate at the next periodic Council election within the meaning of section 3 of that Act or, as the case may be, becomes a candidate but is not elected; or
- (i) in the case of the parliamentary member elected by the Legislative Assembly:
 - (i) ceases to be a Member of that Assembly otherwise than by reason of its dissolution or its expiration by effluxion of time; or
 - (ii) ceases to be a Member of that Assembly by reason of its dissolution or its expiration by effluxion of time and does not become a candidate at the next general election of Members of that Assembly or, as the case may be, becomes a candidate but is not elected; or
- (j) in the case of an elected member, ceases to be qualified for election; or
- (k) in the case of an appointed member (other than a member appointed by the Council under section 10 (6)), is removed from office by the Minister; or
- (l) in the case of a member appointed by the Council under section 10 (6), is removed from office by the Council.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL—*continued*****Filling of vacancy in office of member**

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

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

Committees of the Council

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

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

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

Liability of Council members and others

5. No matter or thing done by the University, the Council or a member of the Council or any person acting under the direction of the University or the Council, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member of the Council or a person so acting personally to any action, liability, claim or demand.

General procedure

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

Presiding member

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

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

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

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

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

Quorum

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

Voting

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

SCHEDULE 2—INVESTMENT

(Sec. 16)

Definition of “funds”

1. For the purposes of this Schedule, the funds of the University include funds under the control of the University and real property, securities or other property comprising an investment.

Investment powers

2. (1) The Council has, in respect of the funds of the University, the investment powers conferred on the Council by Part 3 of the Public Authorities (Financial Arrangements) Act 1987.

(2) If Part 3 of that Act does not confer investment powers on the Council in respect of any such funds, the Council may invest those funds:

SCHEDULE 2—INVESTMENT—*continued*

- (a) in any manner authorised for the investment of trust funds; or
- (b) in any other manner approved by the Minister with the concurrence of the Treasurer.

Investment common funds

3. (1) The Council may establish one or more investment common funds.

(2) The Council may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the University.

(3) Subject to subclause (4), the Council must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.

(4) The Council may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

(5) If an investment is brought into an investment common fund:

- (a) the University is to be taken to hold that investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund; and
- (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Council at the time it is brought into the common fund; and
- (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Council to the equity in the common fund of that participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

*Southern Cross University Act 1993 No. 69*SCHEDULE 2—INVESTMENT—*continued*

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

Terms of trust to prevail

4. In respect of the trust funds of the University:

- (a) the investment powers of the Council; and
- (b) the power of the Council to bring the trust funds into an investment common fund,

are subject to any express direction in or express condition of the trust.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 32)

Part 1—Preliminary**Definitions**

1. In this Part:

“**former campus**” means the University of New England, Northern Rivers (being the network member of that name under the University of New England Act 1989) and the college of the former University of New England at Coffs Harbour (known as the Coffs Harbour Centre);

“**former University of New England**” means the University of New England established under the University of New England Act 1989;

“**transfer day**” means the day on which the University of New England Act 1989 is repealed.

Regulations

2. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

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

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (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; 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.

Part 2—Transfer of staff

Definitions

3. In this Part:

“**officer**”, in relation to a former campus, means a person who, immediately before the transfer day, held any salaried office or employment in the staff establishment of the former campus otherwise than as a casual staff member or a staff member employed on a fixed term contract;

“**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;

“**casual staff member**”, in relation to a former campus, means a person who, immediately before the transfer day, was employed in the staff establishment of that campus on terms and conditions that allowed for his or her services to be dispensed with at any time.

Minister may give directions as to which University staff belong

4. (1) The Minister may, by order in writing, direct that a person who immediately before the transfer day held any salaried office or employment in the staff establishment of the former University of New England is taken for the purposes of this Schedule to have held that office or employment in a specified former campus, and any such direction has effect accordingly.

(2) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
*continued***Transfer of staff generally**

5. (1) Each officer of a former campus becomes, on the transfer day, an officer of the University.

(2) Except as provided by this Part or the regulations, the terms and conditions on which an officer of a former campus becomes an officer of the University are the same as those on which he or she was an officer of the former campus.

Remuneration and tenure

6. (1) An officer of a former campus who, pursuant to this Part, becomes an officer of the University becomes such an officer on the same terms and conditions as to remuneration, and duration of appointment, as those on which he or she was employed at the former campus immediately before the transfer day.

(2) Such part of the remuneration referred to in subclause (1) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the Industrial Relations Act 1991 until the salary is, or the wages are, lawfully varied.

Superannuation

7. (1) An officer of a former campus who, pursuant to this Part, becomes an officer of the University:

- (a) may continue to contribute to any superannuation scheme to which the person was a contributor immediately before becoming an officer of the University; and
- (b) is entitled to receive any payment, pension or gratuity accrued or accruing to the person under any such scheme, as if he or she had continued to be such a contributor during his or her service as an officer of the University.

(2) Service by an officer of a former campus as an officer of the University is taken to be service as an officer of the former campus for the purposes of any law under which the officer continues to contribute to any such scheme or by which an entitlement under any such scheme is conferred.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

(3) An officer of a former campus who, pursuant to this Part, becomes an officer of the University is regarded as an officer or employee, and the University is regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(4) If a person would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under any such scheme:

- (a) the person is not so entitled on the person's becoming a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (3) cease to apply to or in respect of the person and the University where the person becomes a contributor to any such other superannuation scheme.

(5) Subclause (4) does not prevent the payment to an officer of a former campus, on the officer's ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to the officer if the officer had ceased, by reason of resignation, to be such a contributor.

Annual leave, long service leave and sick leave

8. (1) An officer of a former campus who, pursuant to this Part, becomes an officer of the University retains any rights to:

- (a) annual leave; and
- (b) leave in the nature of long service leave; and
- (c) sick leave, accrued or accruing to the person as an officer of the former campus.

(2) A person's entitlement to any such leave is to be calculated:

- (a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day—at the rate for the time being applicable to the officer, as an officer of the former campus, before that day; and
- (b) for such part of that period as occurred after the transfer day—at the rate for the time being applicable to the officer, as an officer of the University, after that day.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

No entitlement to dual benefits

9. An officer of a former campus who, pursuant to this Part, becomes an officer of the University is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind in respect of the same period of service.

Casual staff

10. (1) Each casual staff member of a former campus becomes, on the transfer day, a casual staff member of the University.

(2) A casual staff member of a former campus who, pursuant to this clause, becomes a casual staff member of the University becomes such a staff member on the same terms and conditions (including conditions as to remuneration) as those on which he or she was employed at the former campus immediately before the transfer day.

(3) Such part of the remuneration referred to in subclause (2) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the Industrial Relations Act 1991 until the salary is, or the wages are, lawfully varied.

Fixed term contracts

11. A fixed term contract in force, immediately before the transfer day, between a person and the former University of New England in relation to a former campus (being a contract under which the person performed services for that campus):

- (a) is taken, for the remainder of its term, to be a contract in the same terms, between the person and the University, under which the University assumes the rights and obligations of the former University of New England; and
- (b) may be arbitrated, terminated or renewed in any manner provided by the contract.

Part does not apply to former CEOs etc.

12. This Part does not apply to a person holding office as chief executive officer of a member of the University network under the University of New England Act 1989, or as Vice-Chancellor under that

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SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

Act, as provided by clause 19 (Removal of current office holders) of Schedule 3 to the University of New England Act 1993.

Operation of this Part generally

13. (1) Nothing in this Part affects the operation of the Industrial Relations Act 1991.

(2) Neither the contract of employment nor the period of employment of a person is taken to have been broken by the operation of this Part for the purposes of any law, award or agreement relating to the employment of that person.

(3) A person is not entitled to receive any payment or other benefit merely because the member ceases to be a member of staff of a former campus by the operation of this Part.

Part 3—Property etc.

Definitions

14. In this Part:

“**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

“**instrument**” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do *so* if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

“**liabilities**” means all liabilities, debts and obligations (whether present or future and whether vested or contingent);

“**rights**” means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

What constitutes the assets etc. of a former campus

15. (1) For the purposes of this Part, the assets, rights and liabilities of a former campus comprise:

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (a) those assets, rights and liabilities of the former University of New England that relate to the former campus; and
- (b) any assets, rights and liabilities of the former University of New England that the Minister directs by order in writing are to be regarded as assets, rights or liabilities of the former campus.

(2) The Minister may in a direction under this clause specify a particular day that is later than the commencement of this clause as the transfer day for the purposes of any asset, right or liability to which the direction relates and the day so specified then becomes the transfer day for the purposes of the operation of this Schedule in relation to that asset, right or liability.

(3) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

Transfer of assets etc.

16. (1) On and from the transfer day:
- (a) the assets that comprise any legal or equitable interest in real property of the college of the former University of New England at Coffs Harbour (known as the Coffs Harbour Centre) vest in the Minister by force of this clause and without the need for any conveyance, transfer, assignment or assurance; and
 - (b) the assets of a former campus (other than those provided for by paragraph (a)) vest in the University by force of this clause and without the need for any conveyance, transfer, assignment or assurance; and
 - (c) the rights and liabilities of a former campus become by force of this clause the rights and liabilities of the University; and
 - (d) all proceedings relating to a former campus commenced before the transfer day by or against the former University of New England and pending immediately before the transfer day are taken to be proceedings pending by or against Southern Cross University; and
 - (e) anything done or omitted to be done in relation to a former campus before the transfer day by, to or in respect of the former University of New England is (to the extent that it has any force or effect)

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

taken to have been done or omitted to be done by, to or in respect of Southern Cross University; and

- (f) a reference in any other Act, in any instrument made under any Act or in any document of any kind to a former campus is (to the extent that it relates to a former campus) to be read as, or as including, a reference to the University, or to the Minister for the purposes of paragraph (a).

(2) The University has the control and management of land that was under the control and management of the former University of New England in relation to a former campus immediately before the transfer day, subject to any directions of the Minister in the case of land comprising an asset to which subclause (1) (a) applies.

(3) The assets of a former campus vested in the University or the Minister by this clause are vested subject to any trusts or conditions subject to which they were held immediately before the transfer day and (in the case of assets vested in the University) are to be applied by the University for the purposes of the University.

(4) The transfer, by this Part, of the control and management of any asset to the University does not affect any power of the person or body by whom the control and management of that asset has been conferred, or of any lawful successor of that person or body:

- (a) to remove the control and management of that asset from the University; or
(b) to vary the conditions subject to which the control and management of that asset may be exercised by the University,

that could have been exercised by that person or body, or by that lawful successor, in respect of that property had this Act not been enacted.

Operation of Part

17. (1) The operation of this Part is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
or
(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities;
or

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (d) as an event of default under any contract or other instrument.
- (2) No attornment to Southern Cross University or the Minister by a lessee from the former University of New England is required.
- (3) Any instrument executed only for:
- (a) a purpose ancillary to or consequential on the operation of this Part; or
 - (b) the purpose of giving effect to this Part,
- is not chargeable with stamp duty and is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

Part 4—The interim Council

The interim Council of the University

18. (1) Pending the commencement of section 10, the Council is to consist of such persons as the Minister appoints for the purposes of this clause (referred to in this Part as the “interim Council”).
- (2) The members of the interim Council hold office, subject to this Act, until the commencement of section 10.
- (3) The Minister may call the first meeting of the interim Council in such manner as the Minister thinks fit.
- (4) A member of the interim Council designated by the Minister is to preside at all meetings of the Council until the election of the first Chancellor of the University.
- (5) The interim Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that a Council is duly constituted under section 10 so as to take office within 12 months after the commencement of this clause or within such extended time as is specified in a proclamation at any time during that period of 12 months.
- (6) The interim Council has and may exercise all the functions of the Council until the commencement of section 10, except the functions of

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

the Council under sections 11 (Chancellor) and 12 (Deputy Chancellor). The provisions of this Act (except clause 1 (Term of office) of Schedule 1) applicable to the Council or the members of the Council apply to the interim Council and the members of the interim Council.

(7) Schedule 1 has effect in relation to the members and procedure of the interim Council as if those members were appointed members of the Council.

Election of first Chancellor

19. The election of the first Chancellor of the University by the Council is not to take place until the Council is (apart from the election of Chancellor) fully constituted as provided by section 10.

Appointment of first lay member of Council

20. The first appointment of a person under section 10 (6) as a member of the Council is not to take place until the other members of the Council provided for in section 10 (2), (4) and (5) have been elected or appointed.

Interim Council to appoint first Vice-Chancellor

21. (1) The first Vice-Chancellor is to be a person appointed by the interim Council on the recommendation of a committee established with the approval of the Minister for the purpose of selecting a person for appointment.

(2) The Interim Council may, instead of appointing a person to be Vice-Chancellor, appoint a person to act as Vice-Chancellor pending the appointment of a Vice-Chancellor.

(3) If the interim Council has not appointed a person to be Vice-Chancellor before the commencement of section 10, a vacancy in the office of Vice-Chancellor is considered to have occurred (for the purpose of enabling the Council constituted under section 10 to appoint a person to be the Vice-Chancellor).

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

**Part 5—Other matters consequent on the transfer of the former
campuses**

Students

22. (1) Each person who was, immediately before the transfer day, a student of a former campus enrolled in a course of study becomes on that day a student of the University.

(2) For the purpose of ensuring that those students are not disadvantaged, the University:

- (a) must enter into arrangements with the University of New England for the purpose of affording those students the opportunity (if they wish) to complete the courses in which they were enrolled at a former campus to be provided by the University of New England under the University of New England Act 1993; and
- (b) may (for such period as the University considers necessary) provide courses of study that are substantially the same as the courses of study in which those students were enrolled at a former campus.

(3) A student who is enrolled in a course of study provided by the University pursuant to this clause must, as far as it is practicable to do so, be given credit in that course for any subject or work completed by the student in a course of study in which the student was enrolled at a former campus.

(4) Students so enrolled are entitled, on satisfactory completion of their courses, to appropriate awards conferred by Southern Cross University or the University of New England, as appropriate.

Former By-laws

23. (1) The By-laws of the University of New England as in force immediately before the commencement of this clause:

- (a) are taken to have been made as by-laws under this Act by the Council of the Southern Cross University; and
- (b) may be amended and revoked accordingly.

(2) The Northern Rivers College of Advanced Education By-law is repealed.

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

Saving of delegations

24. Any delegation made by the Board of the former University of New England in respect of a former campus and in force immediately before the transfer day continues to have effect as if it were a delegation made by the Council, but may be revoked at any time by the Council.

Existing investments

25. Nothing in this Part affects the validity of any investment made by or on behalf of the former University of New England before the transfer day.

Conduct of elections etc.

26. (1) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 10, elections may be conducted and appointments made before that commencement as if the whole of this Act were in force.

(2) A member who is elected or appointed to the Council under this clause does not assume office before the commencement of section 10.

Construction of certain references

27. In any other Act or in any statutory instrument (including any industrial award or industrial agreement) or other document, a reference to a former campus is, on and from the transfer day, to be read as a reference to the University.

Determination of certain questions

28. (1) Any question arising in connection with the operation of this Schedule:

- (a) as to which land is under the control and management of any particular institution; or
- (b) as to which institution any assets, rights, liabilities or obligations belong or relate to; or
- (c) as to which institution the employment of any staff pertains to, is to be determined by the Minister.

(2) A certificate by the Minister as to a determination under this clause is, for any purpose, evidence of the matters contained in the certificate.

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continued

(3) The Minister is not to make a determination under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed determination and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed determination is concerned.

*[Minister's second reading speech made in—
Legislative Assembly on 14 October 1993
Legislative Council on 28 October 1993]*