



New South Wales

Universities Legislation Amendment (Financial and Other Powers) Act 2001 No 101

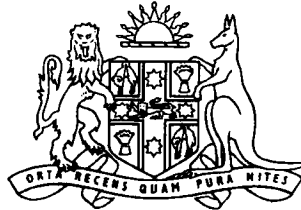
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New South Wales

Universities Legislation Amendment (Financial and Other Powers) Act 2001 No 101

Act No 101, 2001

An Act to amend various Acts to make further provision for the financial and other powers of universities; and for other purposes. [Assented to 11 December 2001]

See also *Higher Education Act 2001*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*.

2 Commencement

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

3 Amendments

The Acts specified in the Schedules to this Act are amended as set out in those Schedules.

Schedule 1 Amendment of Charles Sturt University Act 1989 No 76

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 7 (3) (a).

[2] Section 7

Omit the section. Insert instead:

7 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard, having particular regard to the needs and aspirations of the residents of western and south-western New South Wales,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,

- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
 - (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 8

Omit the section. Insert instead:

8 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 9 Council

Insert after section 9 (1):

(1A) The Council is the governing authority of the University and has the functions conferred or imposed on it by or under this Act or any other Act.

[5] Section 18

Omit the section.

[6] Section 19 Functions of Council

Insert before section 19 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[7] Section 19 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[8] Section 19 (1) (a), (b), (e), (h), (i) and (j)

Omit “may” wherever occurring.

[9] Section 19 (1) (c)

Omit the paragraph.

[10] Section 19 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[11] Section 19 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[12] Section 19 (1) (g)

Omit the paragraph.

[13] Section 19 (2)

Omit “powers”. Insert instead “functions”.

[14] Section 19A

Insert after section 19:

19A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.
- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (6) In this section:
controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[15] Sections 20A and 20B

Insert after section 20:

20A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

20B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 24E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 24A).

[16] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

24A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 24B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and

- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

24B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,
 - (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 24A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.

- (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
- (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

24C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.
- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

24D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

24E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[17] Section 25A

Insert after section 25:

25A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[18] Schedule 1 Provisions relating to members and procedure of the Council

Insert "or omitted to be done" after "done" in clause 5 wherever occurring.

[19] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[20] Schedule 4 Savings and transitional provisions

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Universities Legislation Amendment
(Financial and Other Powers) Act 2001**

39 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

40 Validation

Any act or omission occurring before the substitution of section 7 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 2 Amendment of Macquarie University Act 1989 No 126

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

-
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Council

Insert before section 16 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (6) In this section:

controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 22A

Insert after section 22:

22A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after clause 9:

10 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

11 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 3 Amendment of University of New England Act 1993 No 68

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Council

Insert before section 16 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

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- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (6) In this section:
controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

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- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 22A

Insert after section 22:

22A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after Part 6:

Part 7 Provisions consequent on enactment of Universities Legislation Amendment (Financial and Other Powers) Act 2001

35 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately

before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

36 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 4 Amendment of University of New South Wales Act 1989 No 125

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 15 Functions of Council

Insert before section 15 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 15 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 15 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 15 (1) (c)

Omit the paragraph.

[8] Section 15 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 15 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 15 (1) (g)

Omit the paragraph.

[11] Section 15 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 15A

Insert after section 15:

15A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (6) In this section:
controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 16A and 16B

Insert after section 16:

16A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

16B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 20E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 20A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

20A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 20B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

20B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 20A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

20C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

20D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

20E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 21A

Insert after section 21:

21A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after clause 9:

10 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

11 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 5 Amendment of University of Newcastle Act 1989 No 68

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard, having particular regard to the needs of the Hunter region, the Central Coast and surrounding areas,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,

- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
 - (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Council

Insert before section 16 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

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- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
 - (4) This section does not itself confer power on a controlled entity to engage in any activity.
 - (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
 - (6) In this section:

controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

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- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 22A

Insert after section 22:

22A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after Part 2:

Part 3 Provisions consequent on enactment of Universities Legislation Amendment (Financial and Other Powers) Act 2001

13 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds

immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

13 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 6 Amendment of Southern Cross University Act 1993 No 69

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard, having particular regard to the needs of the north coast region of the State,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 8

Omit the section. Insert instead:

8 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Council

Insert before section 16 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (6) In this section:

controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 23A

Insert after section 23:

23A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after Part 6:

Part 7 Provisions consequent on enactment of Universities Legislation Amendment (Financial and Other Powers) Act 2001

30 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds

immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

31 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 7 Amendment of University of Sydney Act 1989 No 124

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Senate

Insert before section 16 (1):

(1A) The Senate:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Senate to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Senate:".

Insert instead "Without limiting the functions of the Senate under subsection (1A), the Senate may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Senate must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Senate is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Senate to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

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- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
 - (4) This section does not itself confer power on a controlled entity to engage in any activity.
 - (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Senate at its discretion.
 - (6) In this section:

controlled entity means a person, group of persons or body of which the University or Senate has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Senate.

17B Recommendations of Ombudsman or Auditor-General

The Senate must include in each annual report of the Senate as part of the report of its operations a report as to any action taken by the Senate during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Senate or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 26E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 26A).

[14] Part 4, Division 4

Insert after Division 3 of Part 4:

Division 4 Commercial activities

26A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 26B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

26B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Senate may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

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- (d) regulating and imposing requirements concerning the delegation by the Senate of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 26A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Senate in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Senate must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Senate or any failure by the Senate to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Senate of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

26C Register of commercial activities

- (1) The Senate is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.
- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,

- (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Senate must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

26D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Senate as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Senate must provide a report to the Minister in accordance with the Minister's request.

26E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Senate to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 29A

Insert after section 29:

29A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Senate is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Senate for the purposes of the borrowing of money or the investment of funds of the University under this Act.

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- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to Fellows and to the procedure of the Senate

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Senate may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Senate may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer’s approval.
- (3) The Treasurer’s approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.

- (4) An approved funds manager may on behalf of the Senate, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after clause 11:

12 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Senate of any funds of the University in any manner that the Senate was authorised to invest those funds immediately before the Senate ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

13 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 8 Amendment of University of Technology, Sydney, Act 1989 No 69

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Council

Insert before section 16 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

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- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
 - (4) This section does not itself confer power on a controlled entity to engage in any activity.
 - (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
 - (6) In this section:

controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

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- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 22A

Insert after section 22:

22A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after Part 2:

Part 3 Provisions consequent on enactment of Universities Legislation Amendment (Financial and Other Powers) Act 2001

13 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds

immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

14 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 9 Amendment of University of Western Sydney Act 1997 No 116

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 8 (3) (a).

[2] Section 8

Omit the section. Insert instead:

8 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard, having particular regard to the needs and aspirations of residents of Greater Western Sydney,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community, beginning in Greater Western Sydney,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,

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- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
 - (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others, with particular regard to the need to contribute to the development of Greater Western Sydney,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community, with particular regard to the need to contribute to the social, economic and intellectual life of Greater Western Sydney,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 9

Omit the section. Insert instead:

9 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 22 Functions of Board

Insert before section 22 (1):

(1A) The Board:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Board to be best calculated to promote the object and interests of the University.

[5] Section 22 (1)

Omit "The Board:".

Insert instead "Without limiting the functions of the Board under subsection (1A), the Board may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 22 (1) (a), (b), (f), (i), (j) and (k)

Omit "may" wherever occurring.

[7] Section 22 (1) (c)

Omit the paragraph.

[8] Section 22 (1) (e)

Omit the paragraph. Insert instead:

- (e) borrow money 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,

[9] Section 22 (1) (g)

Omit the paragraph. Insert instead:

- (g) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 22 (1) (h)

Omit the paragraph.

[11] Section 22 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 22A

Insert after section 22:

22A Controlled entities

- (1) The Board must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Board is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Board to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Board at its discretion.
- (6) In this section:
controlled entity means a person, group of persons or body of which the University or Board has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 23A and 23B

Insert after section 23:

23A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Board.

23B Recommendations of Ombudsman or Auditor-General

The Board must include in each annual report of the Board as part of the report of its operations a report as to any action taken by the Board during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Board or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 32E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 32A).

[14] Part 4, Division 4

Insert after Division 3 of Part 4:

Division 4 Commercial activities

32A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 32B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

32B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Board may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

- (d) regulating and imposing requirements concerning the delegation by the Board of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 32A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Board in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Board must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Board or any failure by the Board to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Board of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

32C Register of commercial activities

- (1) The Board is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.
- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,

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- (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Board must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

32D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Board as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Board must provide a report to the Minister in accordance with the Minister's request.

32E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Board to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 33A

Insert after section 33:

33A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Board is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Board for the purposes of the borrowing of money or the investment of funds of the University under this Act.

- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of Board

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Board may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Board may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer’s approval.
- (3) The Treasurer’s approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.

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- (4) An approved funds manager may on behalf of the Board, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 4 Savings, transitional and other provisions

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Universities Legislation Amendment
(Financial and Other Powers) Act 2001**

24 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Board of any funds of the University in any manner that the Board was authorised to invest those funds immediately before the Board ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

25 Validation

Any act or omission occurring before the substitution of section 8 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Schedule 10 Amendment of University of Wollongong Act 1989 No 127

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

commercial functions of the University means the commercial functions described in section 6 (3) (a).

[2] Section 6

Omit the section. Insert instead:

6 Object and functions of University

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
 - (a) the provision of facilities for education and research of university standard, having particular regard to the needs of the Illawarra region,
 - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
 - (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
 - (d) the participation in public discourse,
 - (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
 - (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- (3) The University has other functions as follows:
- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,
 - (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,
 - (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,
 - (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.
- (4) The functions of the University may be exercised within or outside the State, including outside Australia.

[3] Section 7

Omit the section. Insert instead:

7 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

[4] Section 16 Functions of Council

Insert before section 16 (1):

(1A) The Council:

- (a) acts for and on behalf of the University in the exercise of the University's functions, and
- (b) has the control and management of the affairs and concerns of the University, and
- (c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

[5] Section 16 (1)

Omit "The Council:".

Insert instead "Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:".

[6] Section 16 (1) (a), (b), (e), (h), (i) and (j)

Omit "may" wherever occurring.

[7] Section 16 (1) (c)

Omit the paragraph.

[8] Section 16 (1) (d)

Omit the paragraph. Insert instead:

- (d) borrow money 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,

[9] Section 16 (1) (f)

Omit the paragraph. Insert instead:

- (f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

[10] Section 16 (1) (g)

Omit the paragraph.

[11] Section 16 (2)

Omit “powers”. Insert instead “functions”.

[12] Section 16A

Insert after section 16:

16A Controlled entities

- (1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.
- (2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

- (3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.
- (4) This section does not itself confer power on a controlled entity to engage in any activity.
- (5) This section does not affect any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.
- (6) In this section:
controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

[13] Sections 17A and 17B

Insert after section 17:

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

- (a) whether or not the recommendation relates to a referral by the Minister under section 21E, and
- (b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

[14] Part 4, Division 3

Insert after Division 2 of Part 4:

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

- (a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

- (1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Council may submit proposals for the Guidelines to the Minister for approval.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,

- (d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Council must ensure that the Guidelines are complied with.
 - (5) The Minister's power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.
 - (6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

- (1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:
 - (a) a description of the activity,
 - (b) details of all parties who participate in the activity,
 - (c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,
 - (d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,
 - (e) such other details as the Guidelines may require.

- (2) The Guidelines may make provision for the following:
 - (a) exempting specified activities or activities of a specified class from all or specified requirements of this section,
 - (b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,
 - (c) enabling related activities to be treated as a single activity for the purposes of the Register.
- (3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

- (1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.
- (2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

- (a) to the Auditor-General for investigation and report to the Minister, or
- (b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

[15] Section 22A

Insert after section 22:

22A Stamp duty exemption

- (1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.
- (2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

[16] Schedule 1 Provisions relating to members and procedure of the Council

Insert “or omitted to be done” after “done” in clause 5 wherever occurring.

[17] Schedule 2 Investment

Omit clause 2. Insert instead:

2 Investment powers

- (1) The Council may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.
- (2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.
- (3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

- (1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.
- (2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.
- (3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.
- (4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.
- (5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

[18] Schedule 3 Savings and transitional provisions

Insert after clause 10:

11 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

12 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Universities Legislation Amendment (Financial and Other Powers) Act
2001 No 101

Amendment of Public Authorities (Financial Arrangements) Act 1987
No 33

Schedule 11

Schedule 11 Amendment of Public Authorities (Financial Arrangements) Act 1987 No 33

(Section 3)

Section 3 Definitions

Insert after paragraph (f) of the definition of *authority* in section 3 (1):

- (f1) a University (or the Board of Trustees, Council or Senate of a University), or

[Minister's second reading speech made in—
Legislative Assembly on 7 November 2001
Legislative Council on 28 November 2001]

BY AUTHORITY