



New South Wales

University Legislation Amendment Act 2004 No 115

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
4 Repeal of Statute Law (Miscellaneous Provisions) Act (No 2) 1999 No 85	2
5 Repeal of University Legislation (Amendment) Act 1994 No 16	2
Schedule 1 Amendment of Charles Sturt University Act 1989 No 76	3
Schedule 2 Amendment of Macquarie University Act 1989 No 126	16
Schedule 3 Amendment of Southern Cross University Act 1993 No 69	30
Schedule 4 Amendment of University of New England Act 1993 No 68	44
Schedule 5 Amendment of University of New South Wales Act 1989 No 125	58
Schedule 6 Amendment of University of Newcastle Act 1989 No 68	71
Schedule 7 Amendment of University of Sydney Act 1989 No 124	85
Schedule 8 Amendment of University of Technology, Sydney, Act 1989 No 69	98

University Legislation Amendment Act 2004 No 115

Contents

	Page
Schedule 9 Amendment of University of Western Sydney Act 1997 No 116	112
Schedule 10 Amendment of University of Wollongong Act 1989 No 127	126



New South Wales

University Legislation Amendment Act 2004 No 115

Act No 115, 2004

An Act to amend certain Universities' Acts to enable the Universities to meet the requirements of the National Governance Protocols for higher education providers of the Commonwealth; and for other purposes. [Assented to 21 December 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *University Legislation Amendment Act 2004*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Acts

Each Act specified in Schedules 1–10 is amended as set out in those Schedules.

4 Repeal of Statute Law (Miscellaneous Provisions) Act (No 2) 1999 No 85

The *Statute Law (Miscellaneous Provisions) Act (No 2) 1999* is repealed.

5 Repeal of University Legislation (Amendment) Act 1994 No 16

The *University Legislation (Amendment) Act 1994* is repealed.

Schedule 1 Amendment of Charles Sturt University Act 1989 No 76

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Sections 8A and 9

Omit section 9. Insert instead:

8A The Council

- (1) There is to be a Council of the University.
- (2) The Council is the governing authority of the University and has the functions conferred or imposed on it by or under this Act or any other Act.

9 Constitution of Council

- (1) The Council is to consist of:
 - (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Senate (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Senate (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 2 persons:
 - (i) who are members of the academic staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and

- (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
- (e) one person:
 - (i) who is a member of the general staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the general staff of the University in the manner prescribed by the by-laws, and
- (f) 2 persons:
 - (i) who are students of the University but who are not members of the academic or general staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by students of the University in the manner prescribed by the by-laws, and
- (g) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Council.
- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (g) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
- (3) A person appointed under subsection (1) (g) is appointed in addition to any member appointed under subsection (1) (c).
- (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.

No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).

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- (5) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
 - (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
 - (7) The majority of members of the Council must be external persons.
 - (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
 - (9) Schedule 1 has effect in relation to the members and procedure of the Council.
 - (10) A reference in this section to external persons is a reference to persons who are not members of the academic or general staff of the University or undergraduate or postgraduate students of the University.

[3] Section 19 Functions of Council

Insert after section 19 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and

- (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 19A), and
- (g) to approve significant University commercial activities (within the meaning of section 24A), and
- (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
- (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
- (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
- (k) to adopt a statement of its primary responsibilities, and
- (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 19, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 19A Controlled entities

Omit "This section does not itself confer" from section 19A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 19A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 19A (5A)

Insert after section 19A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

24F Duties of Council members

The members of the Council have the duties set out in Schedule 3.

24G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 3.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 31 By-laws

Omit “(other than the parliamentary members)” from section 31 (1) (b).

[10] Section 32 Rules

Omit “9 (6), 10 (2), 15 (1), 19 (1) (d) and (e), 26 and 31 (1) (b) and (k) and clauses 1 (d)” from section 32 (1).

Insert instead “9 (1) (c)–(g) and (8), 10 (2), 15 (1), 19 (1) (d) and (e), 26 and 31 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member’s instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e) or (f), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 9 (1) (g), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member’s instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.

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- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or
 - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
- (h) is removed from office by the Council pursuant to section 24G, or
- (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
- (j) in the case of an elected member, or a member appointed under section 9 (1) (g), ceases to be qualified for election or appointment, or

- (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
- (l) in the case of a member appointed by the Council, is removed from office by the Council.

[12] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[13] Schedule 3

Insert after Schedule 2:

Schedule 3 Duties of Council members

(Section 24F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

- (1) If:
- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member of the Council at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or

- (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 24G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
associate of a member means any of the following:
- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[14] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (1):

University Legislation Amendment Act 2004

[15] **Schedule 4, Part 6**

Insert after Part 5:

**Part 6 Provisions consequent on enactment of
University Legislation Amendment Act
2004**

41 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 9 means section 9 as in force immediately before its substitution by the amending Act.

new section 9 means section 9 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

42 General

The provisions of this Part are subject to any regulations made under clause 1.

43 Constitution of Council

- (1) Subject to this Act, on the relevant day:
 - (a) a person holding office under former section 9 (3) ceases to hold that office, and
 - (b) a person holding office under former section 9 (5) (a) or (b) or (7) is taken to be appointed as a member under new section 9 (1) (b), (g) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 9 (6) (a), (b) or (c) is taken to be elected as a member under new section 9 (1) (d), (e) or (f), respectively, for the balance of the person's term of office.
- (2) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (3) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.

- (4) For the purposes of making the by-laws referred to in subclause (3), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (5) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (6) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
 - (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member appointed under new section 9 (1) (g), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (7) Subject to this Act, a member appointed under subclause (6) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (8) Subject to this Act, if, on the expiry:
 - (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
 - (b) in the case of a member appointed under subclause (6), of the term of office of the member's predecessor,the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.

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- (9) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (10) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

44 Maximum incumbency for Council members

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 43 (1) (b) or (c) or (8) of this Schedule.

45 Application of section 24G

Section 24G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

46 Continuation of Council

No amendment made by the amending Act affects the continuity of the Council.

Schedule 2 Amendment of Macquarie University Act 1989 No 126

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Senate (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Senate (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 3 persons:
 - (i) who are members of the academic staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and

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- (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is a student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by students of the University in the manner prescribed by the by-laws, and
 - (g) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Council.
- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (g) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
- (3) A person appointed under subsection (1) (g) is appointed in addition to any member appointed under subsection (1) (c).
- (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.
- No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
- (5) Of the members of the Council:
- (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).

- (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
- (7) The majority of members of the Council must be external persons.
- (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
- (9) Schedule 1 has effect in relation to the members and procedure of the Council.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Council

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
 - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
 - (g) to approve significant University commercial activities (within the meaning of section 21A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and

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- (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
 - (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and

- (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
- (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 28 By-laws

Omit “(other than the parliamentary members)” from section 28 (1) (b).

[10] Section 28 (1) (y)

Omit “and” where secondly occurring.

[11] Section 28 (1) (aa)

Insert at the end of section 28 (1) (z):

, and

(aa) the making, publication and inspection of rules.

[12] Section 29

Omit the section. Insert instead:

29 Rules

- (1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for or with respect to any or all of the matters for or with respect to which by-laws may be made, except the matters referred to in sections 3 (2), 9 (1) (c)–(g) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (1) (c) and (d) and 3 of Schedule 1.
- (2) A rule:
 - (a) has the same force and effect as a by-law, and
 - (b) may, from time to time, be amended or repealed by the Council (whether or not the Council is empowered to make such a rule), or by the authority or officer of the University for the time being empowered to make such a rule, and
 - (c) takes effect on the day on which it is published or on such later day as may be specified in the rule, and
 - (d) must indicate the authority or officer who made the rule and that it is made under this section.
- (3) In the event of an inconsistency between a by-law and a rule, the by-law prevails to the extent of the inconsistency.
- (4) The fact that a provision of this Act specifically provides for a matter to be the subject of by-laws (without mention of rules) does not prevent the matter from being the subject of rules made in accordance with this section.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e) or (f), for such term (not exceeding 3 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 9 (1) (g), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or

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- (iii) in the case of an elected member, to the Vice-Chancellor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
 - (h) is removed from office by the Council pursuant to section 21G, or
 - (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
 - (j) in the case of an elected member, or a member appointed under section 9 (1) (g), ceases to be qualified for election or appointment, or
 - (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a member appointed by the Council, is removed from office by the Council.

[14] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[15] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

(1) If:

- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and

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- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member of the Council at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
 - associate* of a member means any of the following:
 - (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[16] Schedule 3 Savings and transitional provisions

Insert before clause 1:

1A Savings or transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - University Legislation Amendment Act 2004*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[17] Schedule 3, clause 12

Insert after clause 11:

12 Provisions consequent on enactment of University Legislation Amendment Act 2004

- (1) In this clause:
- amending Act* means the *University Legislation Amendment Act 2004*.
- former section 9* means section 9 as in force immediately before its substitution by the amending Act.
- new section 9* means section 9 as substituted by the amending Act.
- relevant day* means the date of assent to the amending Act.
- (2) Subject to this Act, on the relevant day:
- (a) a person holding office under former section 9 (2) ceases to hold that office, and
- (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
- (c) a person holding office under former section 9 (5) (a), (b), (c) or (d) is taken to be elected as a member under new section 9 (1) (d), (e), (f) or (g), respectively, for the balance of the person's term of office.
- (3) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (4) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.
- (5) For the purposes of making the by-laws referred to in subclause (4), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (6) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.

- (7) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
- (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (g), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (8) Subject to this Act, a member appointed under subclause (7) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (9) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (2) (b) or (c), or
 - (b) in the case of a member appointed under subclause (7), of the term of office of the member's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.
- (10) A person who ceases to hold office under subclause (2) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

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- (11) For the purposes of subclause (2), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
 - (12) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
 - (13) However, clause 1 (3) of Schedule 1 does not affect the operation of subclause (2) (b) or (c) or (9) of this Schedule.
 - (14) Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.
 - (15) Any by-law in force immediately before the relevant day is taken to have been validly made under this Act (as amended by the amending Act) but only to the extent to which it could validly have been made immediately after that day.
 - (16) Any rule in force immediately before the relevant day that could validly have been made immediately before that day is taken to have been validly made under this Act as amended by the amending Act.
 - (17) On and after 1 September 2005, subclause (16) does not validate any rule in force immediately before the relevant day that could not have been validly made after the relevant day.
 - (18) No amendment made by the amending Act affects the continuity of the Council.
 - (19) The provisions of this clause are subject to any regulations made under clause 1A.

Schedule 3 Amendment of Southern Cross University Act 1993 No 69

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 10

Omit the section. Insert instead:

10 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Board (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister with, as far as practicable, at least one person appointed from each of the following categories:
 - (i) persons experienced in the field of education or the arts,
 - (ii) persons experienced in technology, industry, commerce or industrial relations,
 - (iii) persons who are practising, or have practised, a profession,
 - (iv) persons associated with the north coast region of the State, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 2 persons:
 - (i) who are members of the academic staff of the University, and

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- (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is a student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by students of the University in the manner prescribed by the by-laws, and
 - (g) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Council.
- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (g) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
- (3) A person appointed under subsection (1) (g) is appointed in addition to any member appointed under subsection (1) (c).
- (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.
- No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).

- (5) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
- (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
- (7) The majority of members of the Council must be external persons.
- (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
- (9) Schedule 1 has effect in relation to the members and procedure of the Council.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Council

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and

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- (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
 - (g) to approve significant University commercial activities (within the meaning of section 21A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
 - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
 - (a) that the governing bodies of controlled entities:

- (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
- (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.

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- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 29 By-laws

Omit “(other than the parliamentary members)” from section 29 (1) (b).

[10] Section 29 (1) (aa)

Insert after section 29 (1) (z):

- (aa) the making, publication and inspection of rules.

[11] Section 30

Omit the section. Insert instead:

30 Rules

- (1) The by-laws may empower any authority (including the Council) or officer of the University to make rules (not inconsistent with this Act or the by-laws) for or with respect to any or all of the matters for or with respect to which by-laws may be made, except the matters referred to in sections 3 (2), 10 (1) (c)–(g) and (8), 11 (2), 16 (1) (d) and (e), 24 and 29 (1) (b) and (k) and clauses 1 (1) (c) and (d) and 3 of Schedule 1.
- (2) A rule:
- (a) has the same force and effect as a by-law, and
 - (b) may, from time to time, be amended or repealed by the Council (whether or not the Council is empowered to make such a rule), or by the authority or officer of the University for the time being empowered to make such a rule, and
 - (c) takes effect on the day on which it is published or on such later day as may be specified in the rule, and
 - (d) must indicate the authority or officer who made the rule and that it is made under this section.
- (3) In the event of an inconsistency between a by-law and a rule, the by-law prevails to the extent of the inconsistency.
- (4) The fact that a provision of this Act specifically provides for a matter to be the subject of by-laws (without mention of rules) does not prevent the matter from being the subject of rules made in accordance with this section.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 10 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
 - (c) in the case of an elected member referred to in section 10 (1) (d), (e) or (f), for such term (not exceeding 3 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 10 (1) (g), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or

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- (iii) in the case of an elected member, to the Vice-Chancellor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
 - (h) is removed from office by the Council pursuant to section 21G, or
 - (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
 - (j) in the case of an elected member, or a member appointed under section 10 (1) (g), ceases to be qualified for election or appointment, or
 - (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a member appointed by the Council, is removed from office by the Council.

[13] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[14] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

(1) If:

- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

- (2) A disclosure by a member of the Council at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.

- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
associate of a member means any of the following:
- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[15] Schedule 3 Savings and transitional provisions

Omit "of this Act." from clause 2 (1). Insert instead:

of this Act and the following Acts:

University Legislation Amendment Act 2004

[16] Schedule 3, clause 2 (2)

Omit "to this Act". Insert instead "to the Act concerned".

[17] Schedule 3, Part 8

Insert after Part 7:

**Part 8 Provisions consequent on enactment of
University Legislation Amendment Act
2004**

32 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 10 means section 10 as in force immediately before its substitution by the amending Act.

new section 10 means section 10 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

33 General

The provisions of this Part are subject to any regulations made under clause 2.

34 Constitution of Council

- (1) Subject to this Act, on the relevant day:
 - (a) a person holding office under former section 10 (2) ceases to hold that office, and
 - (b) a person holding office under former section 10 (4) (a) or (b) or (6) is taken to be appointed as a member under new section 10 (1) (g), (b) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 10 (5) (a), (b) or (c) is taken to be elected as a member under new section 10 (1) (d), (e) or (f), respectively, for the balance of the person's term of office.
- (2) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 10 as soon as is reasonably practicable after the relevant day.
- (3) For the purposes of making the by-laws referred to in subclause (2), the Council must be constituted so as to include all of the members required to be appointed under new section 10 (1) (b).
- (4) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 10.
- (5) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 10 is to be filled as follows:
 - (a) if the vacancy occurs in the office of a member appointed under new section 10 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 10 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 10 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,

- (d) if the vacancy occurs in the office of a member elected under new section 10 (1) (f), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member appointed under new section 10 (1) (g), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (6) Subject to this Act, a member appointed under subclause (5) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (7) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
 - (b) in the case of a member appointed under subclause (5), of the term of office of the member's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 10 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.
- (8) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (9) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

35 Maximum incumbency for Council members

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 34 (1) (b) or (c) or (7) of this Schedule.

36 Application of section 21G

Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

37 Effect of amendments on existing by-laws and rules

- (1) Any by-law in force immediately before the relevant day is taken to have been validly made under this Act (as amended by the amending Act) but only to the extent to which it could validly have been made immediately after that day.
- (2) Any rule in force immediately before the relevant day that could validly have been made immediately before that day is taken to have been validly made under this Act as amended by the amending Act.
- (3) On and after 1 September 2005, subclause (2) does not validate any rule in force immediately before the relevant day that could not have been validly made after the relevant day.

38 Continuation of Council

No amendment made by the amending Act affects the continuity of the Council.

Schedule 4 Amendment of University of New England Act 1993 No 68

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (4):

- (5) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Board (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister following consultation by the Minister with such persons as the Minister considers appropriate, with at least one person from each of the following categories:
 - (i) persons experienced in the field of education,
 - (ii) persons experienced in technology, industry, business, human services or industrial relations,
 - (iii) persons who are practising, or have practised, a profession,
 - (iv) persons having such other qualifications and experience as the Minister thinks appropriate, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 2 persons:
 - (i) who are members of the academic staff of the University, and

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- (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
- (e) one person:
- (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
- (f) one person:
- (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
- (g) one person:
- (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
- (h) one or more external persons (being such number as is prescribed by the by-laws):
- (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Council.

- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (h) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
- (3) A person appointed under subsection (1) (h) is appointed in addition to any member appointed under subsection (1) (c).
- (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.
No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
- (5) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
- (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
- (7) The majority of members of the Council must be external persons.
- (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
- (9) Schedule 1 has effect in relation to the members and procedure of the Council.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Council

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
- (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
 - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
 - (g) to approve significant University commercial activities (within the meaning of section 21A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
 - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 28 By-laws

Omit “(other than the parliamentary members)” from section 28 (1) (b).

[10] Section 29 Rules

Omit “9 (5), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (d) and (e)” from section 29 (1).

Insert instead “9 (1) (c)–(h) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e), (f) or (g), for such term (not exceeding 3 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 9 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or

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- (iii) in the case of an elected member, to the Vice-Chancellor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
 - (h) is removed from office by the Council pursuant to section 21G, or
 - (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
 - (j) in the case of an elected member, or a member appointed under section 9 (1) (h), ceases to be qualified for election or appointment, or
 - (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a member appointed by the Council, is removed from office by the Council.

[12] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[13] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

(1) If:

- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and

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- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member of the Council at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.

- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
 - associate* of a member means any of the following:
 - (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[14] Schedule 3 Savings and transitional provisions

Omit "of this Act." from clause 2 (1). Insert instead:

of this Act and the following Acts:

University Legislation Amendment Act 2004

[15] Schedule 3, clause 2 (2)

Omit "to this Act". Insert instead "to the Act concerned".

[16] **Schedule 3, Part 8**

Insert after Part 7:

**Part 8 Provisions consequent on enactment of
University Legislation Amendment Act
2004**

37 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 9 means section 9 as in force immediately before its substitution by the amending Act.

new section 9 means section 9 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

38 General

The provisions of this Part are subject to any regulations made under clause 2.

39 Constitution of Council

- (1) Subject to this Act, on the relevant day:
 - (a) a person holding office under former section 9 (2) ceases to hold that office, and
 - (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 9 (5) (a), (b), (c), (d) or (e) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (2) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.
- (3) For the purposes of making the by-laws referred to in subclause (2), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).

- (4) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (5) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
 - (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f) or (g), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (h), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (6) Subject to this Act, a member appointed under subclause (5) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (7) Subject to this Act, if, on the expiry:
 - (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
 - (b) in the case of a member appointed under subclause (5), of the term of office of the member's predecessor,the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.
- (8) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.

- (9) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

40 Maximum incumbency for Council members

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 39 (1) (b) or (c) or (7) of this Schedule.

41 Application of section 21G

Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

42 Continuation of Council

No amendment made by the amending Act affects the continuity of the Council.

Schedule 5 Amendment of University of New South Wales Act 1989 No 125

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of President of the Academic Board (if that person is not the Vice-Chancellor) or of Deputy President of the Academic Board (if the President is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, at least one of whom is a graduate of the University, and
 - (d) 4 persons:
 - (i) who are members of the academic staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and

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- (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
 - (g) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
 - (h) 4 external persons:
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are elected by graduates of the University in the manner prescribed by the by-laws.
- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
- (3) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.
- No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).

- (4) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
- (5) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
- (6) The majority of members of the Council must be external persons.
- (7) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
- (8) Schedule 1 has effect in relation to the members and procedure of the Council.
- (9) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 15 Functions of Council

Insert after section 15 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and

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- (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 15A), and
 - (g) to approve significant University commercial activities (within the meaning of section 20A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
 - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 15, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 15A Controlled entities

Omit "This section does not itself confer" from section 15A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 15A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 15A (5A)

Insert after section 15A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

20F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

20G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

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- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
 - (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 27 By-laws

Omit “(other than the parliamentary members)” from section 27 (1) (b).

[10] Section 28 Rules

Omit “9 (5), 10 (2), 15 (1) (d) and (e), 22 and 27 (1) (b) and (k) and clauses 1 (d) and (e)” from section 28 (1).

Insert instead “9 (1) (c)–(h) and (7), 10 (2), 15 (1) (d) and (e), 22 and 27 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member’s instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
 - (d) in the case of an elected member referred to in section 9 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws.
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.

- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or
 - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
- (h) is removed from office by the Council pursuant to section 20G, or
- (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
- (j) in the case of an elected member, ceases to be qualified for election, or

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- (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a member appointed by the Council, is removed from office by the Council.

[12] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[13] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 20F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

- (1) If:
- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member of the Council at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or

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- (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 20G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
associate of a member means any of the following:
- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[14] Schedule 3 Savings and transitional provisions

Insert before clause 1:

1A Savings or transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:
University Legislation Amendment Act 2004
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[15] Schedule 3, clause 12

Insert after clause 11:

12 Provisions consequent on enactment of University Legislation Amendment Act 2004

- (1) In this clause:
- amending Act*** means the *University Legislation Amendment Act 2004*.
- former section 9*** means section 9 as in force immediately before its substitution by the amending Act.
- new section 9*** means section 9 as substituted by the amending Act.
- relevant day*** means the date of assent to the amending Act.
- (2) Subject to this Act, on the relevant day:
- (a) a person holding office under former section 9 (2) ceases to hold that office, and
 - (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 9 (5) (a), (b), (c), (d) or (e) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (3) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (4) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.

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- (5) For the purposes of making the by-laws referred to in subclause (4), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (6) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (7) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
- (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f) or (g), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (h), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (8) Subject to this Act, a member appointed under subclause (7) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (9) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (2) (b) or (c), or
 - (b) in the case of a member appointed under subclause (7), of the term of office of the member's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.

- (10) For the purposes of subclause (2), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (11) A person who ceases to hold office under subclause (2) (a):
 - (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.
- (12) Consecutive years of office served by a member immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (13) However, clause 1 (3) of Schedule 1 does not affect the operation of subclause (2) (b) or (c) or (9) of this Schedule.
- (14) Section 20G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.
- (15) No amendment made by the amending Act affects the continuity of the Council.
- (16) The provisions of this clause are subject to any regulations made under clause 1A.

Schedule 6 Amendment of University of Newcastle Act 1989 No 68

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Senate (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Senate (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister from, as far as practicable, the following categories:
 - (i) persons experienced in the field of education or the arts,
 - (ii) persons experienced in technology, industry, commerce or industrial relations,
 - (iii) persons who are practising, or have practised, a profession, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 2 persons:
 - (i) who are members of the academic staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and

- (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
 - (g) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
 - (h) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are members of Convocation, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by members of Convocation in the manner prescribed by the by-laws or appointed by the Council.
- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (h) that when added to the number of other members to be appointed or elected to the Council would exceed 22.

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- (3) A person appointed under subsection (1) (h) is appointed in addition to any member appointed under subsection (1) (c).
 - (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.
No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
 - (5) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
 - (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
 - (7) The majority of members of the Council must be external persons.
 - (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
 - (9) Schedule 1 has effect in relation to the members and procedure of the Council.
 - (10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Council

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and

- (d) to approve the University's mission, strategic direction, annual budget and business plan, and
- (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
- (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
- (g) to approve significant University commercial activities (within the meaning of section 21A), and
- (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
- (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
- (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
- (k) to adopt a statement of its primary responsibilities, and
- (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit “This section does not affect”.

Insert instead “Nothing in the preceding subsections affects”.

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.

- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 28 By-laws

Omit “(other than the parliamentary members)” from section 28 (1) (b).

[10] Section 29 Rules

Omit “9 (5), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (d) and (e)” from section 29 (1).

Insert instead “9 (1) (c)–(h) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member’s instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,

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- (d) in the case of a member referred to in section 9 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).
 - (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.
 - (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or
 - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

- (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
- (h) is removed from office by the Council pursuant to section 21G, or
- (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
- (j) in the case of an elected member, or a member appointed under section 9 (1) (h), ceases to be qualified for election or appointment, or
- (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
- (l) in the case of a member appointed by the Council, is removed from office by the Council.

[12] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or

- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

- (1) If:

- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

- (2) A disclosure by a member of the Council at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.

- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
 - (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:

associate of a member means any of the following:

 - (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[13] Schedule 3 Savings and transitional provisions

Insert before the heading to Part 1:

Part 1A General

1A Savings or transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

University Legislation Amendment Act 2004

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[14] Schedule 3, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of University Legislation Amendment Act 2004

15 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 9 means section 9 as in force immediately before its substitution by the amending Act.

new section 9 means section 9 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

16 General

The provisions of this Part are subject to any regulations made under clause 1A.

17 Constitution of Council

- (1) Subject to this Act, on the relevant day:
 - (a) a person holding office under former section 9 (2) ceases to hold that office, and
 - (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 9 (5) (a), (b), (c), (c1) or (d) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (2) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (3) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.
- (4) For the purposes of making the by-laws referred to in subclause (3), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (5) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (6) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
 - (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,

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- (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f) or (g), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (h), the Council is to appoint a person qualified to hold that office following consultation with Convocation.
- (7) Subject to this Act, a member appointed under subclause (6) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (8) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
 - (b) in the case of a member appointed under subclause (6), of the term of office of the member's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.
- (9) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (10) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

18 Maximum incumbency for Council members

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 17 (1) (b) or (c) or (8) of this Schedule.

19 Application of section 21G

Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

20 Continuation of Council

No amendment made by the amending Act affects the continuity of the Council.

Schedule 7 Amendment of University of Sydney Act 1989 No 124

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Senate

- (1) The Senate is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Senate), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Board (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister, one of whom is nominated by the Senate for appointment otherwise than pursuant to subsection (2), and
 - (c) one external person appointed by the Senate, and
 - (d) 4 persons:
 - (i) who are members of the academic staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and

- (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
 - (g) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
 - (h) 5 external persons:
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are elected by graduates of the University in the manner prescribed by the by-laws.
- (2) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Senate for appointment.
- No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
- (3) Of the members of the Senate:
- (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).

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- (4) All appointed members of the Senate must have expertise and experience relevant to the functions exercisable by the Senate and an appreciation of the object, values, functions and activities of the University.
 - (5) The majority of members of the Senate must be external persons.
 - (6) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Senate.
 - (7) Schedule 1 has effect in relation to the members and procedure of the Senate.
 - (8) A reference in this section to members of the academic staff of the University includes a reference to such persons as the by-laws declare to be members of the academic staff of the University for the purposes of this section.
 - (9) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Senate

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Senate under subsection (1A), the Senate is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
 - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
 - (g) to approve significant University commercial activities (within the meaning of section 26A), and

- (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
- (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
- (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
- (k) to adopt a statement of its primary responsibilities, and
- (l) to make available for Fellows a program of induction and of development relevant to their role as a Fellow.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Senate and requires the Senate to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Senate is, as far as is reasonably practicable, to ensure:
 - (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Senate or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and

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- (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Senate.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Fellows

26F Duties of Fellows

The Fellows have the duties set out in Schedule 2A.

26G Removal from office for breach of duty

- (1) The Senate may remove a Fellow from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Senate of which notice (including notice of the motion that the Fellow concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of Fellows for the time being.
- (4) The motion for removal must not be put to the vote of the meeting unless the Fellow concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the Fellow to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A Fellow may not be removed from office by the Senate for breach of duty except pursuant to this section.

[9] Section 36 By-laws

Omit “(other than the parliamentary members)” from section 36 (1) (b).

[10] Section 37 Rules

Omit “9 (5) and (9), 10 (2), 14 (1), 16 (1) (d) and (e), 30 and 36 (1) (b) and (k) and clauses 1 (d) and (e)” from section 37 (1).

Insert instead “9 (1) (d)–(h), (6) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 30 and 36 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a Fellow holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member’s instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
 - (d) in the case of an elected member referred to in section 9 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws.
- (2) The need to maintain an appropriate balance of experienced and new members on the Senate must be taken into account:
 - (a) by the Senate, when making the by-laws required under this clause, and
 - (b) by the Minister and the Senate, when appointing members to the Senate.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Senate otherwise resolves in relation to the person).

2 Vacation of office

The office of a Fellow becomes vacant if the Fellow:

- (a) dies, or
- (b) declines to act, or

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- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a Fellow appointed by the Minister, to the Minister, or
 - (ii) in the case of a Fellow appointed by the Senate, to the Chancellor, or
 - (iii) in the case of an elected Fellow, to the Vice-Chancellor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
 - (h) is removed from office by the Senate pursuant to section 26G, or
 - (i) is absent from 3 consecutive meetings of the Senate of which reasonable notice has been given to the Fellow personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Senate for his or her absence, or
 - (j) in the case of an elected Fellow, ceases to be qualified for election, or
 - (k) in the case of a Fellow appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a Fellow appointed by the Senate, is removed from office by the Senate.

[12] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[13] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Fellows

(Section 26F)

1 Duty to act in best interests of University

A Fellow must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A Fellow must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A Fellow must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the Fellow or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A Fellow must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the Fellow or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Fellows

(1) If:

- (a) a Fellow has a material interest in a matter being considered or about to be considered at a meeting of the Senate, and

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- (b) the interest appears to raise a conflict with the proper performance of the Fellow's duties in relation to the consideration of the matter,
the Fellow must, as soon as possible after the relevant facts have come to the Fellow's knowledge, disclose the nature of the interest at a meeting of the Senate.
- (2) A disclosure by a Fellow at a meeting of the Senate that the Fellow:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Senate in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Senate.
- (4) After a Fellow has disclosed the nature of an interest in any matter, the Fellow must not, unless the Senate otherwise determines:
- (a) be present during any deliberation of the Senate with respect to the matter, or
 - (b) take part in any decision of the Senate with respect to the matter.
- (5) For the purpose of the making of a determination by the Senate under subclause (4), a Fellow who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Senate for the purpose of making the determination, or
 - (b) take part in the making by the Senate of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Senate.

- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Senate pursuant to section 26G.
- (8) This clause applies to a member of a committee of the Senate and the committee in the same way as it applies to a member of the Senate and the Senate.
- (9) For the purposes of this clause, a Fellow has a material interest in a matter if a determination of the Senate in the matter may result in a detriment being suffered by or a benefit accruing to the Fellow or an associate of the Fellow.
- (10) In this clause:
associate of a Fellow means any of the following:
 - (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the Fellow,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the Fellow,
 - (c) any other person who is known to the Fellow for reasons other than that person's connection with the University or that person's public reputation.

[14] Schedule 3 Savings and transitional provisions

Insert before clause 1:

1A Savings or transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:
University Legislation Amendment Act 2004
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[15] Schedule 3, clause 14

Insert after clause 13:

14 Provisions consequent on enactment of University Legislation Amendment Act 2004

- (1) In this clause:
- amending Act* means the *University Legislation Amendment Act 2004*.
- former section 9* means section 9 as in force immediately before its substitution by the amending Act.
- new section 9* means section 9 as substituted by the amending Act.
- relevant day* means the date of assent to the amending Act.
- (2) Subject to this Act, on the relevant day:
- (a) a person holding office under former section 9 (2) ceases to hold that office, and
- (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
- (c) a person holding office under former section 9 (5) (a), (b), (c), (d) or (e) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (3) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (4) The Senate is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Senate is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.
- (5) For the purposes of making the by-laws referred to in subclause (4), the Senate must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (6) The Senate is taken to be properly constituted until such time as it is constituted in accordance with new section 9.

- (7) A casual vacancy occurring in the office of a Fellow before the Senate is duly constituted under new section 9 is to be filled as follows:
- (a) if the vacancy occurs in the office of a Fellow appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a Fellow appointed under new section 9 (1) (c), the Senate is to appoint a person whom the Senate considers appropriate,
 - (c) if the vacancy occurs in the office of a Fellow elected under new section 9 (1) (d) or (e), the Senate is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a Fellow elected under new section 9 (1) (f) or (g), the Senate is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Senate,
 - (e) if the vacancy occurs in the office of a Fellow elected under new section 9 (1) (h), the Senate is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (8) Subject to this Act, a Fellow appointed under subclause (7) holds office from the time that person is appointed under that subclause until the expiry of the term of that Fellow's predecessor.
- (9) Subject to this Act, if, on the expiry:
- (a) of a Fellow's term of office that is continued under subclause (2) (b) or (c), or
 - (b) in the case of a Fellow appointed under subclause (7), of the term of office of the Fellow's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the Fellow may continue to hold that office until such time as a person is so duly appointed or elected.
- (10) For the purposes of subclause (2), a Fellow filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the Fellow's predecessor was elected or appointed.
- (11) A person who ceases to hold office under subclause (2) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and

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- (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a Fellow.
- (12) Consecutive years of office served by a Fellow immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the Fellow.
- (13) However, clause 1 (3) of Schedule 1 does not affect the operation of subclause (2) (b) or (c) or (9) of this Schedule.
- (14) Section 26G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.
- (15) No amendment made by the amending Act affects the continuity of the Senate.
- (16) The provisions of this clause are subject to any regulations made under clause 1A.

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

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Board (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister from, as far as practicable, the following categories:
 - (i) persons experienced in the field of education,
 - (ii) persons experienced in technology, industry, business, human services or industrial relations,
 - (iii) persons who are practising, or have practised, a profession,
 - (iv) persons who, in the opinion of the Minister, are likely to contribute to the cultural diversity of the University,
 - (v) persons having such other qualifications and experience as the Minister thinks appropriate, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 2 persons:
 - (i) who are members of the academic staff of the University, and

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- (ii) who have such qualifications as may be prescribed by the by-laws, and
 - (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
 - (g) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
 - (h) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are members of Convocation, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by members of Convocation in the manner prescribed by the by-laws or appointed by the Council.

- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (h) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
- (3) A person appointed under subsection (1) (h) is appointed in addition to any member appointed under subsection (1) (c).
- (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.
No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
- (5) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
- (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
- (7) The majority of members of the Council must be external persons.
- (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
- (9) Schedule 1 has effect in relation to the members and procedure of the Council.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Council

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
- (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
 - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
 - (g) to approve significant University commercial activities (within the meaning of section 21A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
 - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 28 By-laws

Omit “(other than the parliamentary members)” from section 28 (1) (b).

[10] Section 29 Rules

Omit “9 (5), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (d) and (e)” from section 29 (1).

Insert instead “9 (1) (c)–(h) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 9 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
 - (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or

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- (iii) in the case of an elected member, to the Vice-Chancellor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
 - (h) is removed from office by the Council pursuant to section 21G, or
 - (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
 - (j) in the case of an elected member, or a member appointed under section 9 (1) (h), ceases to be qualified for election or appointment, or
 - (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a member appointed by the Council, is removed from office by the Council.

[12] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and

(b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

(1) If:

- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or

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- (c) has some other specified interest relating to a specified company or other body or to a specified person,
is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.

- (10) In this clause:
associate of a member means any of the following:
- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[13] Schedule 3 Savings and transitional provisions

Insert before the heading to Part 1:

Part 1A General

1A Savings or transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:
University Legislation Amendment Act 2004
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[14] **Schedule 3, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
University Legislation Amendment Act
2004**

15 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 9 means section 9 as in force immediately before its substitution by the amending Act.

new section 9 means section 9 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

16 General

The provisions of this Part are subject to any regulations made under clause 1A.

17 Constitution of Council

- (1) Subject to this Act, on the relevant day:
 - (a) a person holding office under former section 9 (2) ceases to hold that office, and
 - (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 9 (5) (a), (b), (c), (c1) or (d) is taken to be elected as a member under new section 9 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (2) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.
- (3) For the purposes of making the by-laws referred to in subclause (2), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).

- (4) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (5) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
 - (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f) or (g), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (h), the Council is to appoint a person qualified to hold that office following consultation with members of Convocation whose names are entered in the Roll of Convocation.
- (6) Subject to this Act, a member appointed under subclause (5) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (7) Subject to this Act, if, on the expiry:
 - (a) of a member's term of office that is continued under subclause (1) (b) or (c), or
 - (b) in the case of a member appointed under subclause (5), of the term of office of the member's predecessor,the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.

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- (8) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (9) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

18 Maximum incumbency for Council members

- (1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 17 (1) (b) or (c) or (7) of this Schedule.

19 Application of section 21G

Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

20 Continuation of Council

No amendment made by the amending Act affects the continuity of the Council.

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

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[2] Section 12

Omit the section. Insert instead:

12 Constitution of Board

- (1) The Board is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Board), and
 - (ii) the Vice-Chancellor, and
 - (iii) the Chair of the Academic Senate, and
 - (b) 6 external persons appointed by the Minister who, in the opinion of the Minister:
 - (i) each have an interest in Greater Western Sydney and its development or an interest in the students or other clients of the University, and
 - (ii) bring to the Board suitable levels of knowledge, skills and experience in matters such as strategic planning, human resources or educational or financial matters, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Board, and
 - (d) one person:
 - (i) who is a member of the academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the academic staff of the University in the manner prescribed by the by-laws, and

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- (e) one person:
 - (i) who is a member of the general staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the general staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is an undergraduate student of the University but who is not a member of the academic or general staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by undergraduate students of the University in the manner prescribed by the by-laws, and
 - (g) one person:
 - (i) who is a postgraduate student of the University but who is not a member of the academic or general staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by postgraduate students of the University in the manner prescribed by the by-laws, and
 - (h) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Board.
- (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (h) that when added to the number of other members to be appointed or elected to the Board would exceed 22.
- (3) A person appointed under subsection (1) (h) is appointed in addition to any member appointed under subsection (1) (c).

- (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Board for appointment.
- No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).
- (5) Of the members of the Board:
- (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
- (6) All appointed members of the Board must have expertise and experience relevant to the functions exercisable by the Board and an appreciation of the object, values, functions and activities of the University.
- (7) The majority of members of the Board must be external persons.
- (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Board.
- (9) Schedule 1 has effect in relation to the members and procedure of the Board.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or general staff of the University or undergraduate or postgraduate students of the University.
- (11) For the purposes of this section, *general staff* of the University excludes the academic staff of the University.

[3] Section 14 Deputy Chancellors

Omit “(whether or not members of the Board)” from section 14 (1).

Insert instead “from the members of the Board”.

[4] Section 14 (1)

Omit “(whether or not a member of the Board)”.

Insert instead “from the members of the Board”.

[5] Section 22 Functions of Board

Insert after section 22 (1A):

- (1B) Without limiting the functions of the Board under subsection (1A), the Board is, in controlling and managing the affairs and concerns of the University:
- (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and
 - (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 22A), and
 - (g) to approve significant University commercial activities (within the meaning of section 32A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
 - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Board a program of induction and of development relevant to their role as such a member.

[6] Section 22, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Board and requires the Board to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[7] Section 22A Controlled entities

Omit "This section does not itself confer" from section 22A (4).

Insert instead "Nothing in the preceding subsections confers".

[8] Section 22A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[9] Section 22A (5A)

Insert after section 22A (5):

- (5A) The Board is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Board or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Board.

[10] Part 4A

Insert after Part 4:

Part 4A Duties of Board members

32F Duties of Board members

The members of the Board have the duties set out in Schedule 2A.

32G Removal from office for breach of duty

- (1) The Board may remove a member of the Board from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Board of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Board.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.
- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Board may not be removed from office by the Board for breach of duty except pursuant to this section.

[11] Section 38 Limited tenure in certain positions

Omit “the Minister may, by order, grant a person an exemption from this section,” from section 38 (3).

Insert instead “a person may be exempted from this section by resolution of the Board”.

[12] Section 38 (6) (d) and (e)

Omit the paragraphs. Insert instead:

- (d) in the case of an elected member of the Board referred to in section 12 (1) (d), (e), (f) or (g)—2 years,
- (e) in the case of an elected member of the Board referred to in section 12 (1) (h)—4 years.

[13] Section 40 By-laws

Omit “(other than the parliamentary members)” from section 40 (1) (b).

[14] Section 41 Rules

Omit “12 (5), 13 (2), 14 (2), 22 (1) (e) and (f) and 40 (1) (b) and clauses 1 (d) and (e)” from section 41 (1).

Insert instead “12 (1) (c)–(h) and (8), 13 (2), 14 (2), 22 (1) (e) and (f) and 40 (1) (b) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Board holds office as follows:
 - (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 12 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member’s instrument of appointment,
 - (c) in the case of an elected member referred to in section 12 (1) (d), (e), (f) or (g), for such term (not exceeding 2 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 12 (1) (h), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member’s instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Board must be taken into account:
 - (a) by the Board, when making the by-laws required under this clause, and
 - (b) by the Minister and the Board, when appointing members to the Board.

2 Vacation of office

The office of a member of the Board becomes vacant if the member:

- (a) dies, or
- (b) in the case of an appointed or elected member, transfers his or her place of permanent residence to a place that is not within the State or the Australian Capital Territory, or
- (c) declines to act, or

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- (d) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Board, to the Chancellor, or
 - (iii) in the case of an elected member, to the Vice-Chancellor, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
 - (i) is removed from office by the Board pursuant to section 32G, or
 - (j) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Board for his or her absence, or
 - (k) in the case of an elected member, or a member appointed under section 12 (1) (h), ceases to be qualified for election or appointment, or
 - (l) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (m) in the case of a member appointed by the Board, is removed from office by the Board.

[16] Schedule 1, clause 3 (2)

Omit the subclause.

[17] Schedule 1, clause 3 (3)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[18] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Board members

(Section 32F)

1 Duty to act in best interests of University

A member of the Board must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Board must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Board must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Board must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Board members

(1) If:

- (a) a member of the Board has a material interest in a matter being considered or about to be considered at a meeting of the Board, and

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- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member of the Board at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Board.
- (4) After a member of the Board has disclosed the nature of an interest in any matter, the member must not, unless the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purpose of the making of a determination by the Board under subclause (4), a member of the Board who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Board pursuant to section 32G.
- (8) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Board in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
 - associate* of a member means any of the following:
 - (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[19] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

University Legislation Amendment Act 2004

[20] Schedule 4, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
University Legislation Amendment Act
2004**

26 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 12 means section 12 as in force immediately before its substitution by the amending Act.

new section 12 means section 12 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

27 General

The provisions of this Part are subject to any regulations made under clause 1.

28 Constitution of Board

- (1) Subject to this Act, on the relevant day:
 - (a) a person holding office under former section 12 (2) ceases to hold that office, and
 - (b) a person holding office under former section 12 (3) (c) or (6) is taken to be appointed as a member under new section 12 (1) (c), and
 - (c) a person holding office under former section 12 (4) is taken to be appointed as a member under new section 12 (1) (b), and
 - (d) a person holding office under former section 12 (5) (a), (b), (c), (d) or (e) is taken to be elected as a member under new section 12 (1) (d), (e), (f), (g) or (h), respectively, for the balance of the person's term of office.
- (2) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 12 (1) (b).
- (3) The Board is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Board is duly constituted under new section 12 as soon as is reasonably practicable after the relevant day.
- (4) For the purposes of making the by-laws referred to in subclause (3), the Board must be constituted so as to include all of the members required to be appointed under new section 12 (1) (b).
- (5) The Board is taken to be properly constituted until such time as it is constituted in accordance with new section 12.
- (6) A casual vacancy occurring in the office of a member before the Board is duly constituted under new section 12 is to be filled as follows:
 - (a) if the vacancy occurs in the office of a member appointed under new section 12 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,

- (b) if the vacancy occurs in the office of a member appointed under new section 12 (1) (c), the Board is to appoint a person whom the Board considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 12 (1) (d) or (e), the Board is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 12 (1) (f) or (g), the Board is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Board,
 - (e) if the vacancy occurs in the office of a member elected under new section 12 (1) (h), the Board is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (7) Subject to this Act, a member appointed under subclause (6) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (8) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (1) (b), (c) or (d), or
 - (b) in the case of a member appointed under subclause (6), of the term of office of the member's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 12 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.
- (9) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (10) A person who ceases to hold office under subclause (1) (a):
- (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

29 Existing exemptions from section 38

An exemption granted by the Minister under section 38 (3) (as in force immediately before its amendment by the amending Act) is taken to be an exemption by resolution of the Board under that subsection as so amended.

30 Application of section 32G

Section 32G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

31 Continuation of Board

No amendment made by the amending Act affects the continuity of the Board.

Schedule 10 Amendment of University of Wollongong Act 1989 No 127

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 9

Omit the section. Insert instead:

9 Constitution of Council

- (1) The Council is to consist of:
- (a) 3 official members, being:
 - (i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and
 - (ii) the Vice-Chancellor, and
 - (iii) the person for the time being holding the office of presiding member of the Academic Senate (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Senate (if the presiding member is the Vice-Chancellor), and
 - (b) 6 external persons appointed by the Minister from, as far as practicable, the following categories:
 - (i) persons experienced in the field of education or the arts,
 - (ii) persons experienced in technology, industry, commerce or industrial relations,
 - (iii) persons who are practising, or have practised, a profession,
 - (iv) persons associated with Illawarra and the South Coast, and
 - (c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and
 - (d) 2 persons:
 - (i) who are members of the academic staff of the University, and
 - (ii) who have such qualifications as may be prescribed by the by-laws, and

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- (iii) who are elected by members of the academic staff of the University in the manner prescribed by the by-laws, and
 - (e) one person:
 - (i) who is a member of the non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by members of the non-academic staff of the University in the manner prescribed by the by-laws, and
 - (f) one person:
 - (i) who is a student of the University but who is not a member of the academic or non-academic staff of the University, and
 - (ii) who has such qualifications as may be prescribed by the by-laws, and
 - (iii) who is elected by students of the University in the manner prescribed by the by-laws, and
 - (g) one or more external persons (being such number as is prescribed by the by-laws):
 - (i) who are graduates of the University, and
 - (ii) who have such qualifications as are prescribed by the by-laws, and
 - (iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Council.
 - (2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (g) that when added to the number of other members to be appointed or elected to the Council would exceed 22.
 - (3) A person appointed under subsection (1) (g) is appointed in addition to any member appointed under subsection (1) (c).
 - (4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.

No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).

- (5) Of the members of the Council:
 - (a) at least 2 must have financial expertise (as demonstrated by relevant qualifications and by experience in financial management at a senior level in the public or private sector), and
 - (b) at least one must have commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector).
- (6) All appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the University.
- (7) The majority of members of the Council must be external persons.
- (8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.
- (9) Schedule 1 has effect in relation to the members and procedure of the Council.
- (10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

[3] Section 16 Functions of Council

Insert after section 16 (1A):

- (1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:
 - (a) to monitor the performance of the Vice-Chancellor, and
 - (b) to oversee the University's performance, and
 - (c) to oversee the academic activities of the University, and
 - (d) to approve the University's mission, strategic direction, annual budget and business plan, and
 - (e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and

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- (f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and
 - (g) to approve significant University commercial activities (within the meaning of section 21A), and
 - (h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and
 - (i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and
 - (j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and
 - (k) to adopt a statement of its primary responsibilities, and
 - (l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

[4] Section 16, note

Insert at the end of the section:

Note. The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

[5] Section 16A Controlled entities

Omit "This section does not itself confer" from section 16A (4).

Insert instead "Nothing in the preceding subsections confers".

[6] Section 16A (5)

Omit "This section does not affect".

Insert instead "Nothing in the preceding subsections affects".

[7] Section 16A (5A)

Insert after section 16A (5):

- (5A) The Council is, as far as is reasonably practicable, to ensure:
- (a) that the governing bodies of controlled entities:
 - (i) possess the expertise and experience necessary to provide proper stewardship and control, and
 - (ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and
 - (iii) adopt and evaluate their own governance principles, and
 - (iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
 - (b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

[8] Part 4A

Insert after Part 4:

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

- (1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.
- (2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.
- (3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.
- (4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

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- (5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.
- (6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

[9] Section 28 By-laws

Omit “(other than the parliamentary members)” from section 28 (1) (b).

[10] Section 29 Rules

Omit “9 (5), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (d) and (e)” from section 29 (1).

Insert instead “9 (1) (c)–(g) and (8), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (1) (c) and (d)”.

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

Omit clauses 1 and 2. Insert instead:

1 Term of office

- (1) Subject to this Act, a member of the Council holds office as follows:
- (a) in the case of an official member, while the member holds the office by virtue of which he or she is a member,
 - (b) in the case of a member appointed under section 9 (1) (b) or (c), for such term (not exceeding 4 years) as may be specified in the member’s instrument of appointment,
 - (c) in the case of an elected member referred to in section 9 (1) (d), (e) or (f), for such term (not exceeding 3 years) as may be prescribed by the by-laws,
 - (d) in the case of a member referred to in section 9 (1) (g), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member’s instrument of appointment (in the case of an appointed member).
- (2) The need to maintain an appropriate balance of experienced and new members on the Council must be taken into account:
- (a) by the Council, when making the by-laws required under this clause, and
 - (b) by the Minister and the Council, when appointing members to the Council.

- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Council otherwise resolves in relation to the person).

2 Vacation of office

The office of a member of the Council becomes vacant if the member:

- (a) dies, or
- (b) declines to act, or
- (c) resigns the office by writing under his or her hand addressed:
 - (i) in the case of a member appointed by the Minister, to the Minister, or
 - (ii) in the case of a member appointed by the Council, to the Chancellor, or
 - (iii) in the case of an elected member, to the Vice-Chancellor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes any assignment of his or her estate for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or
- (h) is removed from office by the Council pursuant to section 21G, or
- (i) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post and is not, within 6 weeks after the last of those meetings, excused by the Council for his or her absence, or
- (j) in the case of an elected member, or a member appointed under section 9 (1) (g), ceases to be qualified for election or appointment, or

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- (k) in the case of a member appointed by the Minister, is removed from office by the Minister, or
 - (l) in the case of a member appointed by the Council, is removed from office by the Council.

[12] Schedule 1, clause 3 (2)

Omit “(otherwise than to fill the office of a parliamentary member)”.

[13] Schedule 2A

Insert after Schedule 2:

Schedule 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

- (a) in good faith in the best interests of the University as a whole, and
- (b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University.

5 Disclosure of material interests by Council members

- (1) If:
- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure by a member of the Council at a meeting of the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.
- (4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:
- (a) be present during any deliberation of the Council with respect to the matter, or
 - (b) take part in any decision of the Council with respect to the matter.
- (5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Council for the purpose of making the determination, or

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- (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council.
- (7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.
- (8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.
- (9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.
- (10) In this clause:
associate of a member means any of the following:
- (a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,
 - (b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,
 - (c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

[14] Schedule 3 Savings and transitional provisions

Insert before clause 1:

1A Savings or transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:
University Legislation Amendment Act 2004
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[15] Schedule 3, clause 13

Insert after clause 12:

13 Provisions consequent on enactment of University Legislation Amendment Act 2004

- (1) In this clause:
- amending Act* means the *University Legislation Amendment Act 2004*.
- former section 9* means section 9 as in force immediately before its substitution by the amending Act.
- new section 9* means section 9 as substituted by the amending Act.
- relevant day* means the date of assent to the amending Act.
- (2) Subject to this Act, on the relevant day:
- (a) a person holding office under former section 9 (2) ceases to hold that office, and
 - (b) a person holding office under former section 9 (4) or (6) is taken to be appointed as a member under new section 9 (1) (b) or (c), respectively, for the balance of the person's term of office, and
 - (c) a person holding office under former section 9 (5) (a), (b), (c) or (d) is taken to be elected as a member under new section 9 (1) (d), (e), (f) or (g), respectively, for the balance of the person's term of office.
- (3) On, or as soon as is reasonably practicable after, the relevant day, the Minister must appoint the balance of the members required to be appointed under new section 9 (1) (b).
- (4) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 9 as soon as is reasonably practicable after the relevant day.

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- (5) For the purposes of making the by-laws referred to in subclause (4), the Council must be constituted so as to include all of the members required to be appointed under new section 9 (1) (b).
- (6) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 9.
- (7) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 9 is to be filled as follows:
- (a) if the vacancy occurs in the office of a member appointed under new section 9 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,
 - (b) if the vacancy occurs in the office of a member appointed under new section 9 (1) (c), the Council is to appoint a person whom the Council considers appropriate,
 - (c) if the vacancy occurs in the office of a member elected under new section 9 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,
 - (d) if the vacancy occurs in the office of a member elected under new section 9 (1) (f), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,
 - (e) if the vacancy occurs in the office of a member elected under new section 9 (1) (g), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.
- (8) Subject to this Act, a member appointed under subclause (7) holds office from the time that person is appointed under that subclause until the expiry of the term of that member's predecessor.
- (9) Subject to this Act, if, on the expiry:
- (a) of a member's term of office that is continued under subclause (2) (b) or (c), or
 - (b) in the case of a member appointed under subclause (7), of the term of office of the member's predecessor,
- the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 9 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.

- (10) For the purposes of subclause (2), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member's predecessor was elected or appointed.
- (11) A person who ceases to hold office under subclause (2) (a):
 - (a) is not entitled to any remuneration or compensation because of loss of that office, and
 - (b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.
- (12) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.
- (13) However, clause 1 (3) of Schedule 1 does not affect the operation of subclause (2) (b) or (c) or (9) of this Schedule.
- (14) Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.
- (15) No amendment made by the amending Act affects the continuity of the Council.
- (16) The provisions of this clause are subject to any regulations made under clause 1A.

[Second reading speech made in—
Legislative Assembly on 26 October 2004
Legislative Council on 9 December 2004]

BY AUTHORITY