



Universities Governing Bodies (University of New South Wales) Order 2012

under the

Universities Governing Bodies Act 2011

I, the Minister for Education, in pursuance of section 4 of the *Universities Governing Bodies Act 2011*, and at the request of the Council of the University of New South Wales, make the following Order.

Dated, this 29th day of March 2012.

ADRIAN PICCOLI, MP
Minister for Education

Explanatory note

The objects of this Order are:

- (a) to give notice of the terms of a governing body resolution made by the Council of the University of New South Wales under section 4 of the *Universities Governing Bodies Act 2011*, and
- (b) to set out the resultant amendments and necessary changes to the *University of New South Wales Act 1989* and the by-laws made under it specified in section 4 (4) (b) and (c) of the *Universities Governing Bodies Act 2011*.

This Order is made under section 4 of the *Universities Governing Bodies Act 2011*.

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Clause 1 Universities Governing Bodies (University of New South Wales) Order 2012

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1 Name of Order

This Order is the *Universities Governing Bodies (University of New South Wales) Order 2012*.

2 Commencement

This Order commences on the day it is published on the NSW legislation website.

3 Notice of terms of governing body resolution and day on which it has effect

- (1) Notice is given that on 5 December 2011 the Council of the University of New South Wales passed a governing body resolution in the following terms:
1. Pursuant to section 4 (1) (a) of the *Universities Governing Bodies Act 2011* the replaceable provisions of the *University of New South Wales Act 1989* are displaced and the standard governing body provisions (set out in Schedule 1 of the *Universities Governing Bodies Act 2011*) are adopted.
 2. In accordance with section 4 (1) (b) of the *Universities Governing Bodies Act 2011*, the following constitution rules are prescribed, for the purposes of the standard governing body provisions:
 - (a) the total number of members of the Council is 15, and
 - (b) the total number of members in each category is:
 - (i) 3 official members,
 - (ii) 5 elected members (being 2 academic staff members, 1 non-academic staff member, 1 undergraduate student member and 1 postgraduate student member),
 - (iii) 5 Council appointed members, and
 - (iv) 2 members appointed by the Minister, and

- (c) the minimum number of external members who must be graduates of the University is 3. They will become members by appointment by the Council or Minister.
- 3. The written advice to the Minister requesting an order in accordance with section 4 of the *Universities Governing Bodies Act 2011*, will include the following provisions:
 - (a) that the standard governing body provisions and the constitution rules are to commence on 1 July 2012,
 - (b) for the purpose only of enabling the Council to be duly constituted on or after the commencement of the standard governing body provisions and the constitution rules, elections may be conducted and appointments made before that commencement as if the standard governing body provisions and the constitution rules were in force.
- (2) The governing body resolution referred to in subclause (1) has effect on 1 July 2012.

4 Amendments to University of New South Wales legislation

- (1) In accordance with section 4 (4) of the *Universities Governing Bodies Act 2011*, the amendments to the *University of New South Wales Act 1989* and *University of New South Wales By-law 2005* set out in Schedule 1 (other than Schedule 1 [7]) and Schedule 2, respectively, commence on 1 July 2012.
- (2) Schedule 1 [7] commences on the day this Order is published on the NSW legislation website.

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Schedule 1 Amendment of University of New South Wales Act 1989 No 125

Schedule 1 Amendment of University of New South Wales Act 1989 No 125

[1] Sections 8 and 9

Omit the sections. Insert instead:

Division 1 The Council

8 Definitions

In this Division:

appointed member means a Council appointed member or a Ministerially appointed member.

categories of members—see section 8B (3).

constitution rules—see section 8B (4).

Council appointed member—see section 8F.

elected member—see section 8D.

external person means a person other than a member of the academic or non-academic staff of the University or an undergraduate or graduate student of the University.

graduate member—see section 8E.

Ministerially appointed member—see section 8G.

official member—see section 8H.

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

8B Size of Council

- (1) The Council is to consist of a minimum of 11, and a maximum of 22, members.
- (2) The total number of members is to be determined from time to time by a resolution passed by at least two-thirds of the members of the Council (the *total number of members*).
- (3) The Council is to include the following categories of members:
 - (a) official members,

- (b) elected members,
 - (c) Council appointed members,
 - (d) Ministerially appointed members.
- (4) Subject to subsection (6), the number of members (other than official members) in each category is to be prescribed by rules made by the Council (in this Division called the *constitution rules*).
- (5) A rule for the purposes of subsection (4) may be made only by a resolution passed by at least two-thirds of the members of the Council.
- (6) The majority of the total number of members must be external persons.
Note. Depending on the circumstances, the Chancellor may be counted as an external person for the purposes of subsection (6).
- (7) The number of members in any one category of members must not at any time constitute a majority of the total number of members.
- (8) The Council must give the Minister written notice of the terms of any resolution passed under this section within 7 days after it is passed.

8C Qualifications and experience of members

- (1) 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).
- (2) All appointed members 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.

8D Elected staff and student members

- (1) The constitution rules are to prescribe the number of persons to comprise the following categories of members:
- (a) elected (academic staff) members,
 - (b) elected (non-academic staff) members,

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(c) elected (student) members.

Note. There may also be elected (graduate) members if the constitution rules so provide—see section 8E.

- (2) Of the members elected under this section:
- (a) at least one must be a member of the academic staff of the University elected by members of the academic staff, and
 - (b) at least one must be a member of the non-academic staff of the University elected by members of the non-academic staff, and
 - (c) at least one must be a student of the University who:
 - (i) is not employed on a full-time basis (or on such other basis as the by-laws may prescribe) as a member of the academic or non-academic staff of the University, and
 - (ii) is elected by the students of the University.
- (3) The members referred to in subsection (2) (a)–(c) are:
- (a) to have such qualifications as may be prescribed by the by-laws, and
 - (b) to be elected in the manner prescribed by the by-laws.

8E Graduate members

- (1) At least one member of the Council, or such greater number of members as may be prescribed by the constitution rules, must be external persons who are graduates of the University.
- (2) The constitution rules may provide for the persons referred to in subsection (1) to become members of the Council in any one or more (or combination) of the following ways:
 - (a) by election as elected (graduate) members in the manner prescribed by the by-laws,
 - (b) by appointment by the Council under section 8F,
 - (c) by appointment by the Minister under section 8G.
- (3) A rule providing for the appointment of a member by the Minister under section 8G may be made only with the approval of the Minister.
- (4) The members referred to in subsection (1) are to have such qualifications (if any) as may be prescribed by the by-laws.

8F Council appointed members

- (1) The Council may appoint as members of the Council such number of external persons as is prescribed by the constitution rules for the category of Council appointed members.
- (2) The by-laws are to prescribe the procedures for the nomination of persons for appointment under this section.

8G Ministerially appointed members

- (1) The Minister may appoint as members of the Council 2 external persons, or such greater number of external persons (not exceeding 6) as is prescribed by the constitution rules for the category of Ministerially appointed members.
- (2) The Minister may not appoint a member of the Parliament of New South Wales, the Parliament of the Commonwealth or another State or the Legislative Assembly of a Territory as a Ministerially appointed member.
- (3) Without limiting the discretion of the Minister under subsection (1), the Council may suggest to the Minister persons who the Council considers would be appropriate for appointment by the Minister.

8H Official members

The *official members* of the Council are the following:

- (a) the Chancellor,
- (b) the Vice-Chancellor,
- (c) the person for the time being holding the office of President of the Academic Board (if the person is not the Vice-Chancellor) or of Deputy President of the Academic Board (if the President is the Vice-Chancellor).

9 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 Ministerially appointed member or Council appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment,

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- (c) in the case of an elected member other than an elected (graduate) member, for such term (not exceeding 2 years) as may be prescribed by the by-laws,
 - (d) in the case of an elected (graduate) member, 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 section, 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).

Division 2 Other officers and bodies

[2] Section 28 Rules

Omit “9 (1) (c)–(h) and (7)” from section 28 (1).

Insert instead “8B, 8D, 8E, 8F, 8G, 9 (1) (c) and (d)”.

[3] Section 28 (1)

Omit “clauses 1 (1) (c) and (d) and 3”. Insert instead “clause 3”.

[4] Section 31 Savings and transitional provisions

Omit section 31 (2) and (3).

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

Omit “(Section 9)”. Insert instead “(Section 8A (3))”.

[6] Schedule 1

Omit clause 1.

[7] **Schedule 3 Savings and transitional provisions**

Insert after clause 12:

13 Adoption of standard governing body provisions under the Universities Governing Bodies Act 2011

- (1) Terms used in this clause and also in the *Universities Governing Bodies Act 2011* have the same meanings in this clause as they have in that Act.
- (2) In this clause:
amended provision means the provisions of this Act and the by-laws amended as set out in an order made by the Minister under section 4 of the *Universities Governing Bodies Act 2011* and the constitution rules as prescribed in the resolution of the Council referred to in that order.
governing body resolution means the governing body resolution made by the Council on 5 December 2011.
- (3) For the purpose only of enabling the Council to be duly constituted on or after the governing body resolution takes effect, elections may be conducted, and appointments made by the Minister or the Council as constituted before the governing body resolution takes effect, as if the amended provisions were in force.
- (4) Subclause (3) has effect despite any requirements of the amended provisions that elections be held at a specified time.
- (5) To avoid doubt, a person who, immediately before the governing body resolution took effect, held office as an appointed or elected member of the Council ceases to hold office on the resolution taking effect.

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Schedule 2 Amendment of University of New South Wales By-law 2005

Schedule 2 Amendment of University of New South Wales By-law 2005

[1] Clause 3 Definitions

Omit the definitions of *academic staff member*, *non-academic staff member*, *postgraduate student member* and *undergraduate student member*.

Insert instead in appropriate alphabetical order:

elected (academic staff) member of the Council means a member of the Council referred to in section 8D (1) (a) of the Act.

elected (non-academic staff) member of the Council means a member of the Council referred to in section 8D (1) (b) of the Act.

elected (postgraduate student) member of the Council means a member of the Council referred to in section 8D (1) (c) of the Act who is a postgraduate student of the University.

elected (undergraduate student) member of the Council means a member of the Council referred to in section 8D (1) (c) of the Act who is an undergraduate student of the University.

[2] Clause 3

Omit “section 9 (1) (h)” from the definition of *graduate member*.

Insert instead “section 8E”.

[3] Clause 9 Time of elections

Insert “2” after “to elect” in clause 9 (2).

[4] Clause 9 (4)–(6)

Omit the subclauses.

[5] Clause 10 Rolls

Omit “section 9 (1) (d)” from clause 10 (a). Insert instead “section 8D (1) (a)”.

[6] Clause 10 (b)

Omit “section 9 (1) (e)”. Insert instead “section 8D (1) (b)”.

[7] Clause 10 (c)

Omit “section 9 (1) (f)”. Insert instead “section 8D (1) (c)”.

[8] Clause 10 (d)

Omit “section 9 (1) (g)”. Insert instead “section 8D (1) (c)”.

[9] Clause 10 (e)

Omit the paragraph.

[10] Clause 11 Qualification for election as elected (academic staff) member of Council

Omit “section 9 (1) (d)”. Insert instead “section 8D (1) (a)”.

[11] Clause 12 Qualification for election as elected (non-academic staff) member of Council

Omit “section 9 (1) (e)”. Insert instead “section 8D (1) (b)”.

[12] Clause 13

Omit the clause. Insert instead:

13 Qualification for election as elected (undergraduate student) member of Council

For the purposes of section 8D (1) (c) of the Act, the prescribed qualification in respect of a person seeking election as an elected (student) member who is an undergraduate student of the University is that the person’s name is on the Roll of Undergraduate Students at the time specified in the notice referred to in clause 16 for close of nominations for the election.

[13] Clause 14

Omit the clause. Insert instead:

14 Qualification for election as elected (postgraduate student) member of Council

For the purposes of section 8D (1) (c) of the Act, the prescribed qualification in respect of a person seeking election as an elected (student) member who is a postgraduate student of the University is that the person’s name is on the Roll of Postgraduate Students at the time specified in the notice referred to in clause 16 for close of nominations for the election.

[14] Clause 15 Qualification for election as graduate

Omit the clause.

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Schedule 2 Amendment of University of New South Wales By-law 2005

[15] Clause 19

Omit the clause. Insert instead:

19 Dealing with nominations

- (1) If no more than 2 nominations of persons for election to the Council as an elected (academic staff) member are accepted, the Returning Officer is to declare the person or persons nominated to be elected. If more than 2 nominations are accepted, there must be a ballot.
- (2) If no more than one nomination of persons for election to the Council is accepted in any of the following categories, the Returning Officer is to declare the person nominated to be elected:
 - (a) the elected (non-academic staff) member,
 - (b) the elected (undergraduate student) member,
 - (c) the elected (postgraduate student) member.
- (3) If more than one nomination is accepted in any category referred to in subclause (2), there must be a ballot in the category concerned.

[16] Clause 44 Terms of office

Omit clause 44 (1).

[17] Clause 44 (2)

Omit the subclause. Insert instead:

- (2) The term of office of a person elected to the Council as an elected (academic staff) member, elected (non-academic staff) member or elected (student) member is 2 years.

[18] Clause 46 Definitions

Omit the definition of *external persons*.

[19] Clause 47 Number of members appointed under section 9 (1) (c)

Omit the clause.

[20] Clause 49 Invitation for proposals

Omit “section 9 (1) (b) or (c)” from clause 49 (1).

Insert instead “section 8F or 8G”.

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- [21] **Clause 49 (1) (a)**
Omit the paragraph. Insert instead:
(a) for the Council to suggest to the Minister as appropriate for appointment by the Minister, or
- [22] **Clause 49 (3) (a)**
Omit “nomination for consideration”.
Insert instead “as appropriate persons to be suggested”.
- [23] **Clause 49 (3) (c)**
Omit “section 9 (5)”. Insert instead “section 8C”.
- [24] **Clause 49 (3) (d)**
Omit the paragraph. Insert instead:
(d) if the vacancy to be filled is in the office of a member appointed under section 8E of the Act, state that the vacancy is to be filled by a graduate, and
- [25] **Clause 50 Nominations Committee to consider proposals**
Omit “for nomination for consideration” from clause 50 (b) (i).
Insert instead “as appropriate persons to be suggested”.
- [26] **Clause 51 Council to consider recommendations of Nominations Committee**
Omit “nomination for consideration” from clause 51 (1) (b) (i).
Insert instead “be suggested as appropriate persons”.
- [27] **Clause 52 Casual vacancy in office of member appointed under section 8G**
Omit “section 9 (1) (b)” from clause 52 (1). Insert instead “section 8G”.
- [28] **Clause 52 (1)**
Omit “recommended”. Insert instead “suggested”.
- [29] **Clause 53 Casual vacancy in office of member appointed under section 8E**
Omit “section 9 (1) (c)” from clause 53 (1). Insert instead “section 8E”.