



# Universities Governing Bodies (University of Newcastle) 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*, make the following Order.

Dated, this 5th day of September 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 Newcastle 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 Newcastle 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*.

## 2012 No 447

Universities Governing Bodies (University of Newcastle) Order 2012

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### Contents

	Page
1 Name of Order	3
2 Commencement	3
3 Notice of terms of governing body resolution and day on which it has effect	3
4 Amendment to University of Newcastle legislation	4
Schedule 1 Amendment of University of Newcastle Act 1989 No 68	5
Schedule 2 Amendment of University of Newcastle By-law 2005	12

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## Universities Governing Bodies (University of Newcastle) Order 2012

under the

Universities Governing Bodies Act 2011

### 1 Name of Order

This Order is the *Universities Governing Bodies (University of Newcastle) Order 2012*.

### 2 Commencement

This Order commences on the day on which 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 24 August 2012 the Council of the University of Newcastle passed a governing body resolution in the following terms:
- (a) by at least two-thirds majority, resolve that pursuant to section 4 (1) (a) of the *Universities Governing Bodies Act 2011* the replaceable provisions of the *University of Newcastle Act 1989* are displaced and the standard governing body provisions (set out in Schedule 1 to the *Universities Governing Bodies Act 2011*) are adopted,
  - (b) by at least two-thirds majority, in accordance with section 4 (1) (b) of the *Universities Governing Bodies Act 2011*, approve the following constitution rules, for the purposes of the governing body provisions:
    - (i) the total number of members of the Council is 16,
    - (ii) the total number of members in each category is:
      - (A) 3 official members, and
      - (B) 4 elected members (being 2 academic staff members, 1 non-academic staff member and 1 student member), and
      - (C) 7 Council appointed members, and
      - (D) 2 members appointed by the Minister,

## 2012 No 447

Clause 4                      Universities Governing Bodies (University of Newcastle) Order 2012

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- (iii) 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.
- (2) The governing body resolution referred to in subclause (1):
  - (a) to the extent that it authorises the amendment made by Schedule 1 [6], has effect on the day this Order is published on the NSW legislation website, and
  - (b) for all other purposes, has effect on 1 January 2013.

#### **4 Amendment to University of Newcastle legislation**

- (1) In accordance with section 4 (4) of the *Universities Governing Bodies Act 2011*, the amendments to the *University of Newcastle Act 1989* and *University of Newcastle By-law 2005* set out in Schedule 1 (other than Schedule 1 [6]) and Schedule 2, respectively, commence on 1 January 2013.
- (2) Schedule 1 [6] commences on the day this Order is published on the NSW legislation website.

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## Schedule 1      Amendment of University of Newcastle Act 1989 No 68

### [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,

## 2012 No 447

Universities Governing Bodies (University of Newcastle) Order 2012

Schedule 1 Amendment of University of Newcastle Act 1989 No 68

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- (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,
- (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.

## 2012 No 447

Universities Governing Bodies (University of Newcastle) Order 2012

Schedule 1 Amendment of University of Newcastle Act 1989 No 68

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### 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 Senate (if the person is not the Vice-Chancellor) or of Deputy President of the Academic Senate (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 29 Rules**

Omit “9 (1) (c)–(h) and (8)” from section 29 (1).

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

**[3] Section 29 (1)**

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

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

Omit clause 1.

**[5] Schedule 1, clause 2**

Omit “9 (1) (h)” from clause 2 (j). Insert instead “8F”.

## 2012 No 447

Universities Governing Bodies (University of Newcastle) Order 2012

Schedule 1 Amendment of University of Newcastle Act 1989 No 68

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### [6] Schedule 3 Savings and transitional provisions

Insert after Part 4:

## Part 5 Provisions consequent on adoption of standard governing body provisions

### 21 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 provisions*** means the provisions of this Act and the by-laws amended as set out in the *Universities Governing Bodies (University of Newcastle) Order 2012* and the constitution rules as prescribed in the resolution of the Council referred to in that Order.  
***existing appointed member*** of the Council means a member of the Council as constituted immediately before the governing body resolution was passed who was appointed by the Minister or the Council.  
***governing body resolution*** means the governing body resolution passed by the Council on 24 August 2012.
- (3) An existing appointed member of the Council holds office as an appointed member of the Council until 1 January 2013 (subject to the member's office becoming vacant earlier for a reason other than the expiration of the member's term of office).
- (4) The provisions of this Act, and the by-laws, as in force immediately before the commencement of the *Universities Governing Bodies (University of Newcastle) Order 2012*, continue to apply in respect of existing appointed members until 1 January 2013.
- (5) The proportion of the Council and Ministerially appointed members of the Council specified under the constitution rules is, until 1 January 2013, taken to be the number of existing members in those categories at any particular time.
- (6) For the purposes only of enabling the Council to be duly constituted on or after 1 January 2013 elections for each of the categories of elected members may be conducted as if the amended provisions were in force.

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- (7) A person who, immediately before 1 January 2013, held office as an elected (academic staff) member or elected (non-academic staff) member of the Council continues to hold office after that date.
  - (8) Subclause (6) has effect despite any requirements of the amended provisions that elections be held at a specified time.

## 2012 No 447

Universities Governing Bodies (University of Newcastle) Order 2012

Schedule 2 Amendment of University of Newcastle By-law 2005

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### Schedule 2 Amendment of University of Newcastle By-law 2005

**[1] Clause 2 Definitions**

Omit the definition of *external persons*. Insert instead:

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

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

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

**[2] Clause 4 Procedure for suggestions in relation to members appointed under section 8G**

Omit “9 (1) (b)” wherever occurring in clause 4 (1). Insert instead “8G”.

**[3] Clause 4 (1)**

Omit “propose”. Insert instead “suggest”.

**[4] Clause 4 (3) (a) and (b)**

Omit “proposal” wherever occurring. Insert instead “suggestion”.

**[5] Clause 4 (4) and (5) (a) and (b)**

Omit “proposals” wherever occurring. Insert instead “suggestions”.

**[6] Clause 4 (5) (b)**

Omit “nomination”. Insert instead “suggestion”.

**[7] Clause 4 (6) (b)**

Omit “nominated for consideration”. Insert instead “suggested”.

**[8] Clause 4 (6) (b)**

Omit “9 (1) (b), (5) and (6)”. Insert instead “8C”.

**[9] Clause 5 Casual vacancy in office of member appointed under section 8G**

Omit “9 (1) (b)” from clause 5 (1). Insert instead “8G”.

**[10] Clause 5 (1)**

Omit “nominated”. Insert instead “suggested”.

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- [11] **Clause 6 Procedure for nominations in relation to members appointed under section 8F**  
Omit “9 (1) (c)” wherever occurring in clause 6 (1) and (2).  
Insert instead “8F”.
- [12] **Clause 6 (7) (b)**  
Omit “9 (5) and (6)”. Insert instead “8C”.
- [13] **Clause 7 Casual vacancy in office of member appointed under section 8F**  
Omit “9 (1) (c)” from clause 7 (1). Insert instead “8F”.
- [14] **Clause 8 Procedure for nomination in relation to members appointed under section 8F**  
Omit “9 (1) (h)” from clause 8 (1) and (2) wherever occurring.  
Insert instead “8F”.
- [15] **Clause 8 (8) (b)**  
Omit “9 (5) and (6)”. Insert instead “8C”.
- [16] **Clause 9 Casual vacancy in office of member appointed under section 8F**  
Omit “9 (1) (h)” from clause 9 (1). Insert instead “8F”.
- [17] **Clause 12 Qualifications of elected members**  
Omit “9 (1) (d)” from clause 12 (1). Insert instead “8D (1) (a)”.
- [18] **Clause 12 (2)**  
Omit “9 (1) (e)”. Insert instead “8D (1) (b)”.
- [19] **Clause 12 (3)**  
Omit “9 (1) (f) of the Act”.  
Insert instead “8D (1) (c) of the Act who is an undergraduate student of the University”.
- [20] **Clause 12 (4)**  
Omit “9 (1) (g) of the Act”.  
Insert instead “8D (1) (c) of the Act who is a postgraduate student of the University”.

## 2012 No 447

Universities Governing Bodies (University of Newcastle) Order 2012

Schedule 2 Amendment of University of Newcastle By-law 2005

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### [21] **Clause 28 Term of office of elected members**

Omit clause 28 (1). Insert instead:

- (1) For the purposes of section 9 (1) (c) and (d) of the Act:
  - (a) the prescribed term of office for a member of the Council referred to in section 8D (1) (a) of the Act is 2 years, and
  - (b) the prescribed term of office for a member of the Council referred to in section 8D (1) (b) of the Act is 2 years, and
  - (c) the prescribed term of office for a member of the Council referred to in section 8D (1) (c) of the Act who is an undergraduate student of the University is 2 years.