



Universities Governing Bodies (Macquarie University) 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 Macquarie University, make the following Order.

Dated, this 21st day of November 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 Macquarie University under section 4 of the *Universities Governing Bodies Act 2011*, and
- (b) to set out the resultant amendments and necessary changes to the *Macquarie University 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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Universities Governing Bodies (Macquarie University) Order 2012

under the

Universities Governing Bodies Act 2011

1 Name of Order

This Order is the *Universities Governing Bodies (Macquarie University) 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

(1) Notice is given that on 20 June 2012 the Macquarie University Council passed a governing body resolution in the following terms:

(a) In accordance with section 4 (1) (a) of the *Universities Governing Bodies Act 2011*:

- (i) the replaceable provisions of the *Macquarie University Act 1989* (being sections 8 and 9 of, and clause 1 of Schedule 1 to, the *Macquarie University Act 1989*) are displaced, and
- (ii) the standard governing body provisions (set out in Schedule 1 to the *Universities Governing Bodies Act 2011*) are adopted instead.

(b) 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:

- (i) the total number of members of the Council is 19,
- (ii) the total number of members in each category is:
 - (A) 3 official members,
 - (B) 5 elected members (being 3 academic staff members, 1 non-academic staff member and 1 student member),
 - (C) 5 Council appointed members,

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- (D) 2 members appointed by the Minister,
 - (E) the minimum number of external members who must be graduates of the University is 4. They will become (graduate) members by appointment by the Council.
- (c) The written advice to the Minister requesting an order in accordance with section 4 (2) of the *Universities Governing Bodies Act 2011*, will note:
- (i) that the standard governing body provisions and the constitution rules are to commence on 1 January 2013, and
 - (ii) for the purposes 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 date as if the standard governing body provisions and the constitution rules were in force.

4 Amendment of Macquarie University legislation

- (1) In accordance with section 4 (4) of the *Universities Governing Bodies Act 2011*, the amendments to the *Macquarie University Act 1989* and *Macquarie University By-law 2005* set out in Schedule 1 (other than Schedule 1 [7]) and Schedule 2, respectively, commence on 1 January 2013.
- (2) Schedule 1 [7] commences on the day on which this Order is published on the NSW legislation website.

Schedule 1 Amendment of Macquarie University Act 1989 No 126

[1] Part 3 The Council, authorities and officers

Omit sections 8 and 9. 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 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.
- (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,

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Schedule 1 Amendment of Macquarie University Act 1989 No 126

- (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.

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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 presiding member of the Academic Senate (if the person is not the Vice-Chancellor) or of deputy presiding member of the Academic Senate (if the presiding member 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)–(g) and (8)” from section 29 (1).

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

[3] Section 29 (1)

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

[4] Section 32 Savings and transitional provisions

Omit section 32 (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.

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Schedule 1 Amendment of Macquarie University Act 1989 No 126

[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 a provision 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*.
governing body resolution means the governing body resolution made by the Council on 20 June 2012.
- (3) For the purpose only of enabling the Council to be duly constituted on or after the governing body resolution takes effect:
 - (a) appointments may be made by the Minister or the Council as if the amended provisions were in force, and
 - (b) elections may be held as if the amended provisions were in force.
- (4) For the purposes of the appointment of a member of the Council made by the Minister or the Council before the governing body resolution takes effect, a requirement of the by-laws relating to the time within which persons who may be suitable for appointment as a Council or Ministerially appointed member of the Council are required to be recommended or suggested does not apply.
- (5) An appointed member of the Council who was appointed before the governing body resolution takes effect:
 - (a) if the person was appointed for a term commencing on the day on which the governing body resolution takes effect—holds office until the expiration of the term for which the person was appointed to hold office (subject to the member's office becoming vacant earlier for a reason other than the expiration of the member's term of office), and
 - (b) if the person (other than a person referred to in paragraph (a)) held office as an appointed member of the Council immediately before the day on which the governing body resolution took effect—continues in office until the expiration of the term for which the person was appointed to hold office (subject to the member's office

- becoming vacant earlier for a reason other than the expiration of the member's term of office), and
- (c) is taken to be a member of the corresponding category of membership set out in the amended provisions.
- (6) An elected member of the Council:
- (a) continues in office until the expiration of the term for which the member was elected to hold office (subject to the member's office becoming vacant earlier for a reason other than the expiration of the member's term of office), and
 - (b) is taken to be a member of the corresponding category of membership set out in the amended provisions.

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Schedule 2 Amendment of Macquarie University By-law 2005

Schedule 2 Amendment of Macquarie University By-law 2005

[1] Clause 3 Interpretation

Omit the definitions of *academic staff member of the Council*, *external persons*, *graduate member of the Council*, *non-academic staff member of the Council* and *student member of the Council* from clause 3 (1).

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

external person has the same meaning as in Division 1 of Part 2 of the Act.

graduate member of the Council means a member of the Council referred to in section 8E of the Act.

[2] Clause 5 Elected (academic staff) members of Council

Omit “academic staff members of the Council”.

Insert instead “elected (academic staff) members of the Council”.

[3] Clause 6 Elected (non-academic staff) members of Council

Omit “non-academic staff members of the Council”.

Insert instead “elected (non-academic staff) members of the Council”.

[4] Clause 9 Term of office of elected members of Council

Omit the clause. Insert instead:

9 Term of office of elected members of Council

For the purposes of section 9 (1) (c) and (d) of the Act:

- (a) the term of office of an elected (academic staff) member is 2 years, and
- (b) the term of office of an elected (non-academic) staff member is 2 years, and
- (c) the term of office of an elected (student) member is 2 years.

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- [5] **Clause 10 Casual vacancy in office of elected (academic staff) member or elected (non-academic staff) member of Council**
Omit “academic staff member of the Council or the non-academic staff member of the Council” from clause 10 (1) and (2) wherever occurring.
Insert instead “elected (academic staff) member of the Council or the elected (non-academic staff) member of the Council”.
- [6] **Clauses 12 and 13**
Omit the clauses.
- [7] **Clause 15 Nomination procedures relating to appointed members of Council**
Omit “section 9 (1) (b), (c) or (g)” from clause 15 (1).
Insert instead “section 8E, 8F or 8G”.
- [8] **Clause 15 (3) (d)**
Omit “section 9 (5) and (6)”. Insert instead “section 8C”.
- [9] **Clause 15 (5) (b) (i)**
Omit “nominated”. Insert instead “suggested”.
- [10] **Clause 15 (5) (c) (i)**
Omit “recommended”. Insert instead “suggested”.
- [11] **Clause 16 Casual vacancy in office of Ministerially appointed members**
Omit “section 9 (1) (b)” from clause 16 (1). Insert instead “section 8G”.
- [12] **Clause 16 (1)**
Omit “nominated”. Insert instead “suggested”.
- [13] **Clause 17 Casual vacancy in office of Council appointed members**
Omit “section 9 (1) (c) or (g)” from clause 17 (1).
Insert instead “section 8E or 8F”.
- [14] **Clause 35 Making of rules by Council and Vice-Chancellor**
Omit “9 (1) (c)–(g) and (8)” from the note to clause 35 (3).
Insert instead “8D, 8E, 8F”.
- [15] **Clause 35 (3), note**
Omit “clauses 1 (1) (c) and (d) and”. Insert instead “clause”.
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Schedule 2 Amendment of Macquarie University By-law 2005

[16] Schedule 1 Procedures for election

Omit “academic staff member of the Council or a non-academic staff member of the Council” from clause 4 (1) (a).

Insert instead “elected (academic staff) member of the Council or an elected (non-academic staff) member of the Council”.