



New South Wales

Universities Governing Bodies (Western Sydney University) Order 2019

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 30th day of January 2019.

ROBERT STOKES, 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 Board of Trustees of the Western Sydney University under section 4 of the *Universities Governing Bodies Act 2011*, and
- (b) to set out the resultant amendments and necessary changes to the *Western Sydney University Act 1997* 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*.

Universities Governing Bodies (Western Sydney University) Order 2019

under the

Universities Governing Bodies Act 2011

1 Name of Order

This Order is the *Universities Governing Bodies (Western Sydney University) Order 2019*.

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

Notice is given that on 8 August 2018 the Board of Trustees of the Western Sydney University passed a governing body resolution, by which the Board resolved:

- (a) to displace the replaceable provisions of the *Western Sydney University Act 1997* and adopt instead the standard governing body provisions as set out in the *Universities Governing Bodies Act 2011*, and
- (b) to determine, for the purposes of section 4 (1) (b) of the Act, that the membership of the Board of Trustees is to be amended as follows, subject to savings provisions that allow existing members to continue to hold office in the relevant categories for the remainder of their terms of office, unless they sooner resign or otherwise cease to hold office:
 - (i) the total membership of the Board of Trustees is to remain at 18 members,
 - (ii) the total number of Ministerial appointees is to be reduced from 6 to 2 members,
 - (iii) the total number of Board appointees is to increase from 5 (counting the graduate member) to 9 members,
 - (iv) the total number of members in each other category of membership (including elected members) of the Board of Trustees is to remain unchanged, and
- (c) to adopt a new *Western Sydney University (Constitution Rule)* as a constitution rule for the purposes of clause 3 (4) of Schedule 1 to the *Universities Governing Bodies Act 2011*, to take effect when the changes to the *Western Sydney University Act 1997* take effect.

4 Amendments to Western Sydney University legislation

In accordance with section 4 (4) of the *Universities Governing Bodies Act 2011*, the amendments to the *Western Sydney University Act 1997* and *Western Sydney University By-law 2017* set out in Schedules 1 and 2, respectively, commence on the commencement of this Order.

Schedule 1 Amendment of Western Sydney University Act 1997 No 116

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Deputy President of the Academic Senate means the Deputy Chair of the Academic Senate.

general staff of the University means, for the purposes of the standard governing body provisions adopted in Division 1 of Part 3, the professional staff of the University.

President of the Academic Senate means the Chair of the Academic Senate, appointed under section 21.

[2] Part 3 Governance of University

Omit section 10. Insert instead:

Division 1 The Board of Trustees

10 Definitions

In this Division:

appointed member means a Board appointed member or a Ministerially appointed member.

Board appointed member—see section 10F.

categories of members—see section 10B (3).

constitution rules—see section 10B (4).

elected member—see section 10D.

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

graduate member—see section 10E.

Ministerially appointed member—see section 10G.

official member—see section 10H.

10A Board

- (1) There is to be a Board of Trustees of the University.
- (2) The Board 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 Board.

10B Size of Board

- (1) The Board 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 Board (the *total number of members*).
- (3) The Board is to include the following categories of members:
 - (a) official members,
 - (b) elected members,

- (c) Board 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 Board (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 Board.
- (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 Board must give the Minister written notice of the terms of any resolution passed under this section within 7 days after it is passed.

10C Qualifications and experience of members

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

10D 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 (general staff) members,
 - (c) elected (student) members.
- Note.** There may also be elected (graduate) members if the constitution rules so provide—see section 10E.
- (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 general staff of the University elected by members of the general 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 general 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.

10E Graduate members

- (1) At least one member of the Board, 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 Board 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 Board under section 10F,
 - (c) by appointment by the Minister under section 10G.
- (3) A rule providing for the appointment of a member by the Minister under section 10G 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.

10F Board appointed members

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

10G Ministerially appointed members

- (1) The Minister may appoint as members of the Board 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 Board may suggest to the Minister persons who the Board considers would be appropriate for appointment by the Minister.

10H Official members

The *official members* of the Board 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).

10I 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 Ministerially appointed member or Board appointed member, 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 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 Board must be taken into account:
- (a) by the Board, when making the by-laws required under this section, and
 - (b) by the Minister and the Board, when appointing members to the Board.
- (3) A person must not be appointed or elected to serve more than 12 consecutive years of office (unless the Board otherwise resolves in relation to the person).

[3] Section 12 Constitution of Board

Omit the section.

[4] Part 3, Division 2, heading

Insert before section 13:

Division 2 Other officers and bodies

[5] Section 38 Limited tenure in certain positions

Omit section 38 (1) (c) and (d) and (6) (c)–(e).

[6] Section 38 (2)

Omit “re-election or” wherever occurring.

[7] Section 38 (3) and (4)

Omit “re-elected or” wherever occurring.

[8] Section 38 (5)

Omit “or elected”.

[9] Section 41 Rules

Omit “12 (1) (c), (d) (ii), (e) (ii), (f) (ii), (g) (ii) and (h) (ii) and (8)” from section 41 (1).

Insert instead “10D (2) (c) (i) and (3) (a), 10E (4), 10F (2), 10I (1) (c) and (d) and (2) (a)”.

[10] Section 41 (1)

Omit “clause 1 (1) (c) and (d) of Schedule 1 and clause 3 of that Schedule”.

Insert instead “clause 3 of Schedule 1”.

[11] Section 41 (1A)

Omit “sections 12 (1) (d) (iii), (e) (iii), (f) (iii), (g) (iii) and (h) (iii)”.

Insert instead “sections 10D (3) (b), 10E (2) (a)”.

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

Omit “(Section 12)”. Insert instead “(Section 10A (3))”.

[13] Schedule 1, clause 1

Omit the clause.

[14] Schedule 1, clause 2 (d) (i) and (l)

Omit “member appointed by the Minister” wherever occurring.

Insert instead “Ministerially appointed member”.

[15] Schedule 1, clause 2 (d) (ii) and (m)

Omit “member appointed by the Board” wherever occurring.

Insert instead “Board appointed member”.

[16] Schedule 1, clause 2 (k)

Omit “member appointed under section 12 (1) (h)”.

Insert instead “Board appointed member who is a graduate member referred to in section 10E”.

[17] Schedule 1, clause 2 (2)

Insert at the end of clause 2:

(2) In this clause:

Board appointed member of the Board means a member appointed under section 10F.

Ministerially appointed member of the Board means a member appointed under section 10G.

[18] Schedule 4 Savings, transitional and other provisions

Insert after clause 36:

Part 8 Provisions consequent on adoption of standard governing body provisions

37 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 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*.

existing member of the Board means a member of the Board as constituted immediately before the governing body resolution took effect.

Note. The governing body resolution took effect on the day on which the *Universities Governing Bodies (Western Sydney University) Order 2019* commenced.

governing body resolution means the governing body resolution made by the Board of Trustees on 8 August 2018.

- (3) An existing member of the Board continues in office until the expiration of the term for which the member was appointed or elected (subject to the member's office becoming vacant earlier for a reason other than the expiration of the member's term of office).

Schedule 2 Amendment of Western Sydney University By-law 2017

[1] Clause 3 Definitions

Omit the definitions of *academic staff member*, *Board appointed member*, *Ministerially appointed member*, *postgraduate member*, *professional staff member* and *undergraduate member* from clause 3 (1).

[2] Part 3

Omit the Part. Insert instead:

Part 3 The Board

Division 1 Procedure for appointment of members

6 Definitions

In this Division:

Board appointed member of the Board means a member appointed under section 10F.

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

7 Nomination procedures for Board appointed members

- (1) As soon as reasonably practicable before the term of office of a Board appointed member of the Board expires, a nominations committee established by the Board is to identify persons who may be suitable for appointment as a member of that category.
- (2) The nominations committee is:
 - (a) to determine which of those persons are to be recommended to the Board for appointment by the Board, and
 - (b) to recommend the period of appointment for each of the persons to be recommended, and
 - (c) to forward its recommendations to the Board.
- (3) In determining the persons to be recommended under subclause (2) (a), the nominations committee is to have regard to:
 - (a) the skills and experience of the current members of the Board, and
 - (b) the matters referred to in section 10C of the Act.
- (4) The Board is:
 - (a) to consider the recommendations forwarded by the nominations committee, and
 - (b) to determine which of the recommended persons are to be appointed by the Board, and
 - (c) to determine the recommended period of appointment for each such person.
- (5) A nominations committee is to consist of the following persons:
 - (a) the Chancellor,

- (b) the Deputy Chancellor or the Deputy Chancellors (as the case may be),
 - (c) the Vice-Chancellor,
 - (d) if the Board so resolves, one or more members of the Board who are external persons.
- (6) Despite subclause (5), a nominations committee may be differently constituted if the Board so resolves.

8 Procedure for filling casual vacancy in office of Board appointed member

If a casual vacancy occurs in the office of a Board appointed member of the Board, the Board is to appoint another person to fill the vacancy in accordance with the procedures set out in clause 7.

Note. Section 10I (1) (b) of the Act provides that, subject to the Act, a Board appointed member holds office for the term (not exceeding 4 years) specified in the member's instrument of appointment.

Division 2 Elected members of the Board

9 Definitions

In this Division:

elected member of the Board means a member elected under section 10D of the Act.

10 Election procedures for elected member of the Board

For the purposes of section 10D (3) (b) of the Act, an election is to be conducted in accordance with rules made by the Board.

11 Procedure for filling casual vacancy in office of elected member

A casual vacancy in the office of an elected member of the Board is to be filled as follows:

- (a) if the vacancy occurs within the first 12 months of the term of that office, a person is to be elected, in accordance with rules made by the Board, to hold the office for the remainder of the term,
- (b) in any other case, the Board must appoint a person who is qualified to hold the office of an elected member of the Board to hold the office of the previous member for the remainder of the term.

12 Qualifications for candidates and voters

- (1) The qualifications for election for a position as a member of the Board and voting at an election are as follows:
 - (a) **Elected (academic staff) member**

The qualifications for election as an elected (academic staff) member of the Board under section 10D (1) (a) of the Act, and the qualifications for voting at such an election, are that the candidate or voter, as the case may be, must have his or her name entered on the Roll of Academic Staff at the date and time for the close of nominations for the relevant election.
 - (b) **Elected (general staff) member**

The qualifications for election as an elected (general staff) member of the Board under section 10D (1) (b) of the Act, and the qualifications for voting at such an election, are that the candidate or voter, as the case may be, must have his or her name entered on the Roll of Professional

Staff at the date and time for the close of nominations for the relevant election.

(c) **Elected (student) member**

The qualifications for election as an elected (student) member of the Board under section 10D (1) (c) of the Act, and the qualifications for voting at such an election, are that the candidate or voter, as the case may be, must have his or her name entered on the Roll of Undergraduate Students or the Roll of Postgraduate Students at the date and time for the close of nominations for the relevant election.

- (2) A person may not stand for election for more than one position as a member of the Board, even if his or her name is entered on more than one Roll kept under this By-law.
- (3) A person whose name is entered on more than one Roll kept under this By-law may vote in each relevant election category.

12A Term of office of elected members

For the purposes of section 10I (1) (c) of the Act, the prescribed term of office of an elected member of the Board is:

- (a) for a person elected to fill a vacancy due to the expiry of the term of office of the previous office holder—2 years commencing on 1 January following the election of the person, or
- (b) for a person elected to fill a casual vacancy—the remainder of the term of office of the previous office holder.

Note. Section 37 of the Act enables the re-appointment or re-election of a person to an office under the Act that the person has held and for which the person is still eligible.

[3] Clause 13 Making rules

Omit “12 (1) (c), (d) (ii), (e) (ii), (f) (ii), (g) (ii) and (h) (ii) and (8)” from the note.

Insert instead “10D (2) (c) (i) and (3) (a), 10E (4), 10F (2), 10I (1) (c) and (d) and (2) (a)”.

[4] Clause 13, note

Omit “clause 1 (1) (c) and (d) of Schedule 1 to the Act and clause 3 of that Schedule”.

Insert instead “clause 3 of Schedule 1 to the Act”.

[5] Clause 13, note

Omit “sections 12 (1) (d) (iii), (e) (iii), (f) (iii), (g) (iii) and (h) (iii)”.

Insert instead “sections 10D (3) (b), 10E (2) (a)”.