

# University of New England Act 1993 No 68

[1993-68]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Universities Legislation Amendment (Financial and Other Powers) Act 2001 No 101* (not commenced)

### Authorisation

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# University of New England Act 1993 No 68



New South Wales

An Act to establish a new University of New England and to provide for its constitution and functions; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *University of New England Act 1993*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Council** means the Council of the University.

**University** means the University of New England established by this Act.

(2) In this Act, a reference to a graduate of the University is a reference to a person who is the recipient of a degree or diploma, or of such other award or certificate as may be prescribed by the by-laws, conferred or awarded by or on behalf of:

(a) the University, or

(b) any former institution that is currently a part of the University (having become a part of the University or any predecessor of the University pursuant to the *Higher Education (Amalgamation) Act 1989* or otherwise), or

(c) any predecessor of the University or of any institution referred to in paragraph (b).

(3) Former institutions that became a part of the University or a predecessor of the University (such as the Northern Rivers College of Advanced Education and the Orange Agricultural College) are not considered to be predecessors of the University for the purposes of subsection (2) (c) or section 14 (2).

(4) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **Part 2 Constitution and functions of the University**

### **4 Establishment of University**

A University is established by this Act, consisting of:

- (a) a Council, and
- (b) Convocation, and
- (c) the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe, and
- (d) the graduates and students of the University.

### **5 Incorporation of University**

The University is a body corporate under the name of the University of New England.

### **6 Functions of University**

- (1) The functions of the University (within the limits of its resources) include:
  - (a) the provision of educational and research facilities at university standard, and
  - (b) the promotion, advancement and transmission of knowledge and research, and
  - (c) the commitment to the development and provision of cultural, professional, technical and vocational services to the community, and
  - (d) the conferring of the degrees of Bachelor, Master and Doctor and the awarding of diplomas and other certificates.
- (2) The University has such other functions as are conferred or imposed on it by or under this or any other Act.

### **7 Facilities to be provided for students**

The University may, for the purpose of exercising its functions, provide such facilities for its students as it considers desirable.

## **Part 3 The Council, authorities and officers of the University**

### **8 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.

### **9 Constitution of Council**

- (1) The Council is to consist of:
  - (a) parliamentary members, and
  - (b) official members, and
  - (c) appointed members, and
  - (d) elected members.
- (2) The parliamentary members comprise:
  - (a) one Member of the Legislative Council elected by that Council:
    - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each periodic Council election within the meaning of section 3 of the *Constitution Act 1902*, or
    - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant, and
  - (b) one Member of the Legislative Assembly elected by that Assembly:
    - (i) as soon as practicable after the commencement of this section and thereafter as soon as practicable after each general election of Members of the Legislative Assembly, or
    - (ii) if there is a casual vacancy in the office of that member of the Council, as soon as practicable after that office becomes vacant.
- (3) The official members comprise:
  - (a) the Chancellor (if the Chancellor is not otherwise a member of the Council),
  - (b) the Vice-Chancellor, and
  - (c) the person for the time being holding the office of:
    - (i) presiding member of the Academic Board (if that person is not the Vice-Chancellor), or

- (ii) deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor).
- (4) The appointed members comprise 6 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:
- (a) persons experienced in the field of education,
  - (b) persons experienced in technology, industry, business, human services or industrial relations,
  - (c) persons who are practising, or have practised, a profession,
  - (d) persons having such other qualifications and experience as the Minister thinks appropriate.
- (5) The elected members comprise:
- (a) 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
  - (b) 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
  - (c) 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 students of the University in the manner prescribed by the by-laws, and
  - (d) one person:
    - (i) who is a post-graduate 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 post-graduate students of the University in the manner prescribed by the by-laws, and
- (e) 2 persons:
- (i) who are members of Convocation (but who are not members of the academic or non-academic staff of the University having the qualifications referred to in paragraphs (a) (ii) or (b) (ii) or students of the University having the qualifications referred to in paragraph (c) (ii) or (d) (ii)), and
  - (ii) who have such qualifications as may be prescribed by the by-laws, and
  - (iii) who are elected by members of Convocation in the manner prescribed by the by-laws.
- (6) The Council may appoint any other person who is not a student or a member of staff of the University to be a member of the Council and the person, on being appointed, is to be taken to be an appointed member of the Council in addition to the members appointed under subsection (4).
- (7) No more than one person may hold office at any one time as an appointed member under subsection (6).
- (8) Schedule 1 has effect in relation to the members and procedure of the Council.

## **10 Chancellor**

- (1) The Council is to elect a person (whether or not a member of the Council) to be the Chancellor of the University, and is to do so:
- (a) at its first meeting or as soon as practicable thereafter, and
  - (b) whenever a vacancy in the office of Chancellor occurs.
- (2) The Chancellor, unless he or she sooner resigns as Chancellor, holds office for such period (not exceeding 5 years), and on such conditions, as may be prescribed by the by-laws.
- (3) The Chancellor has the functions conferred or imposed on the Chancellor by or under this or any other Act.

## **11 Deputy Chancellor**

- (1) The Council is to elect one of its members to be the Deputy Chancellor of the University, and is to do so:
- (a) at its first meeting or as soon as practicable thereafter, and



(b) whenever a vacancy in the office of Deputy Chancellor occurs.

- (2) The Deputy Chancellor, unless he or she sooner resigns as Deputy Chancellor or ceases to be a member of the Council, holds office for 2 years from the date of election and on such conditions as may be prescribed by the by-laws.
- (3) In the absence of the Chancellor, or during a vacancy in the office of Chancellor or during the inability of the Chancellor to act, the Deputy Chancellor has all the functions of the Chancellor.

## **12 Vice-Chancellor**

- (1) Whenever a vacancy occurs in the office of Vice-Chancellor, the Council is to appoint a person (whether or not a member of the Council) to be the Vice-Chancellor of the University.
- (2) The Vice-Chancellor holds office for such period, and on such conditions, as the Council determines.
- (3) The Vice-Chancellor is the chief executive officer of the University and has the functions conferred or imposed on the Vice-Chancellor by or under this or any other Act.

## **13 Visitor**

- (1) The Governor is the Visitor of the University but has ceremonial functions only.
- (2) Accordingly, the Visitor has no functions or jurisdiction with respect to the resolution of disputes or any other matter concerning the affairs of the University (other than a matter involving the exercise of ceremonial functions only).

## **14 Convocation**

- (1) Convocation consists of:
  - (a) the graduates of the University, and
  - (b) the members and past members of the Council of the University, and
  - (c) the present and past full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe, and
  - (d) such graduates of other universities, or other persons, as are, in accordance with the by-laws, admitted as members of Convocation.
- (2) In this section:
  - (a) a reference to the University includes a reference to any predecessor of the

University, and to any former institution that became a part of the University or of any predecessor of the University pursuant to the *Higher Education (Amalgamation) Act 1989* (or otherwise) and is currently a part of the University, and

- (b) a reference to the Council of the University includes a reference to the governing body of an institution referred to in paragraph (a).
- (3) The first meeting of convocation is to be convened by the Vice-Chancellor.
- (4) Subject to the by-laws, meetings of Convocation are to be convened and the business at the meetings is to be as determined by Convocation.
- (5) A quorum at any meeting of Convocation is to be such number of members as may be prescribed by the by-laws.
- (6) Convocation has such functions as may be prescribed by the by-laws.
- (7) The Council may establish a Standing Committee and such other committees of Convocation as it considers necessary.

## **15 Academic Board**

- (1) There is to be an Academic Board of the University, consisting of:
  - (a) the Vice-Chancellor, and
  - (b) such other persons as the Council may, in accordance with the by-laws, determine.
- (2) The constitution and functions of the Academic Board are to be as prescribed by the by-laws, subject to subsection (1).

## **Part 4 Functions of the Council**

### **Division 1 General**

#### **16 Powers of Council**

- (1) The Council:
  - (a) may provide such courses, and may confer such degrees and award such diplomas and other certificates, as it thinks fit, and
  - (b) may appoint and terminate the appointment of academic and other staff of the University, and
  - (c) has the control and management of the affairs and concerns of the University and is to act in all matters concerning the University in such manner as appears to it to

be best calculated to promote the objects and interests of the University, and

- (d) may borrow money for the purpose of exercising any of its functions, for the renewal of loans or for the discharge or partial discharge of any indebtedness to the Treasurer or to any bank, building society or credit union, within such limits, to such extent and on such conditions as to security or otherwise as the Governor, on the recommendation of the Treasurer, may approve, and
  - (e) may invest any funds belonging to or vested in the University, and
  - (f) may establish or participate in such trusts, companies or other incorporated bodies as it considers appropriate to promote the objects and interests of the University, and
  - (g) may engage in the commercial development of any discovery or invention, or of any intellectual property, in which the University has a right or interest, and
  - (h) may establish and maintain branches and colleges of the University, within the University and elsewhere, and
  - (i) may make loans and grants to students, and
  - (j) may impose fees, charges and fines.
- (2) The powers of the Council under this section are to be exercised subject to the by-laws.
- (3) Schedule 2 has effect in relation to the investment of funds by the Council.

### **17 Delegation by Council**

The Council may, in relation to any matter or class of matters, or in relation to any activity or function of the University, by resolution, delegate all or any of its functions (except this power of delegation) to any member or committee of the Council or to any authority or officer of the University or to any other person or body prescribed by the by-laws.

## **Division 2 Property**

### **18 Powers of Council relating to property**

- (1) The Council:
- (a) may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise, and
  - (b) has the control and management of all property at any time vested in or acquired by the University and may, subject to this section, dispose of property in the name and on behalf of the University.

- (2) The Council must not, except with the approval of the Minister, alienate, mortgage, charge or demise any lands of the University.
- (3) Despite subsection (2), the Council may, without the approval of the Minister, lease any lands of the University if:
  - (a) the term of the lease does not exceed 21 years, and
  - (b) the Council is satisfied that it is to the benefit of the University, whether from a financial or educational standpoint or otherwise, that the lease be entered into.
- (4) In the case of a lease of any lands of the University, or any renewal of the lease, to a residential college affiliated with the University, the lease:
  - (a) is to be for a term not exceeding 99 years, and
  - (b) is to be at a nominal rent, and
  - (c) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.
- (5) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the University has agreed.

#### **19 Powers of Council over certain property vested in Crown**

- (1) Where any property used for the conduct of the University is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the Council has the control and management of that property and is responsible for its maintenance.
- (2) Nothing in subsection (1) enables the Council to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).
- (3) Despite subsection (2), the Council may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.
- (4) Such a lease:
  - (a) is to be for a term not exceeding 21 years, and
  - (b) is to contain a condition that the lease is not to be assigned and such other conditions as the Council thinks fit.
- (5) The Council is, in the exercise of its functions under this section, subject to the control and direction of the Minister.

## **20 Acquisition of land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The Minister may do so only if the University:
  - (a) applies to the Minister for acquisition of the land, and
  - (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).
- (3) For the purposes of the [Public Works Act 1912](#), any acquisition of land under this section is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (4) Sections 34, 35, 36 and 37 of the [Public Works Act 1912](#) do not apply in respect of works constructed under this section.

## **21 Grant or transfer of certain land to University**

- (1) If land on which the University is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:
  - (a) if it is vested in the Crown—be transferred to the University subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister for Land and Water Conservation thinks fit, or
  - (b) if it is vested in a Minister of the Crown—be conveyed or transferred to the University for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit.
- (2) A conveyance, transfer or other instrument executed for the purposes of this section:
  - (a) is not liable to stamp duty under the [Stamp Duties Act 1920](#), and
  - (b) may be registered under any Act without fee.

## **Part 5 General**

### **22 Advance by Treasurer**

The Treasurer may, with the approval of the Governor, advance to the Council money for the temporary accommodation of the University on such terms and conditions in relation to repayment and interest as may be agreed.

### **23 Financial year**

The financial year of the University is:

- (a) if no period is prescribed as referred to in paragraph (b)—the year commencing on 1 January, or
- (b) the period prescribed by the by-laws for the purposes of this section.

### **24 No religious test or political discrimination**

A person must not, because of his or her religious or political affiliations, views or beliefs, be denied admission as a student of the University or be ineligible to hold office in, to graduate from or to enjoy any benefit, advantage or privilege of the University.

### **25 Exemption from membership of body corporate or Convocation**

A student or graduate of the University or a member of staff of the University is entitled to be exempted by the Council, on grounds of conscience, from membership of the body corporate of the University or of Convocation, or both.

### **26 Re-appointment or re-election**

Nothing in this Act prevents any person from being re-appointed or re-elected to any office under this Act if the person is eligible and otherwise qualified to hold that office.

### **27 Seal of University**

The seal of the University is to be kept in such custody as the Council may direct and is only to be affixed to a document pursuant to a resolution of the Council.

### **28 By-laws**

- (1) The Council may make by-laws, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any of the following:
  - (a) the management, good government and discipline of the University,
  - (b) the method of election of members of the Council (other than the parliamentary members) who are to be elected,
  - (c) the manner and time of convening, holding and adjourning the meetings of the Council or Academic Board,
  - (d) the manner of voting (including postal voting or voting by proxy) at meetings of the Council or Academic Board,
  - (e) the functions of the presiding member of the Council or Academic Board,

- (f) the conduct and record of business of the Council or Academic Board,
- (g) the appointment of committees of the Council or Academic Board,
- (h) the quorum and functions of committees of the Council or Academic Board,
- (i) the resignation of members of the Council, the Chancellor, the Deputy Chancellor or the Vice-Chancellor,
- (j) the tenure of office, stipend and functions of the Vice-Chancellor,
- (k) the designation of members of staff of the University as academic staff, non-academic staff, full-time staff, part-time staff or otherwise,
- (l) the number, stipend, manner of appointment and dismissal of officers and employees of the University,
- (m) admission to, enrolment in and exclusion from courses of studies,
- (n) the payment of such fees and charges, including fines, as the Council considers necessary, including fees and charges to be paid in respect of any of the following:
  - (i) entrance to the University,
  - (ii) tuition,
  - (iii) lectures and classes,
  - (iv) examinations,
  - (v) residence,
  - (vi) the conferring of degrees and the awarding of diplomas and other certificates and awards,
  - (vii) the provision of amenities and services, whether or not of an academic nature,
  - (viii) an organisation of students or of students and other persons,
- (o) the exemption from, or deferment of, payment of fees and charges, including fines,
- (p) without limiting the operation of paragraphs (n) and (o), the imposition and payment of penalties for parking and traffic infringements,
- (q) the courses of lectures or studies for, the assessments for and the granting of degrees, diplomas, certificates, awards and honours and the attendance of candidates for degrees, diplomas, certificates and honours,

- (r) the assessments for, and the granting of, fellowships, scholarships, exhibitions, bursaries and prizes,
  - (s) the admission of students and former students of other universities and institutions of higher education to any status within the University or the granting to graduates of such universities or institutions, or other persons, of degrees or diplomas without examination,
  - (t) the establishment and conduct of places of accommodation for students (including residential colleges and halls of residence within the University) and the affiliation of residential colleges,
  - (u) the affiliation with the University of any educational or research establishment,
  - (v) the creation of faculties, schools, departments, centres or other entities within the University,
  - (w) the provision of schemes of superannuation for the officers and employees of the University,
  - (x) the form and use of academic costume,
  - (y) the form and use of an emblem of the University or of any body within or associated with the University,
  - (z) the use of the seal of the University,
  - (aa) the making, publication and inspection of rules.
- (2) A by-law has no effect unless it has been approved by the Governor.

## **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 (5), 10 (2), 14 (1), 16 (1) (d) and (e), 23 and 28 (1) (b) and (k) and clauses 1 (d) and (e) 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.

### **30 Recovery of charges, fees and other money**

Any charge, fee or money due to the University under this Act may be recovered as a debt in any court of competent jurisdiction.

### **31 Savings and transitional provisions**

Schedule 3 has effect.

### **32 Repeal**

The *University of New England Act 1989* is repealed.

## **Schedule 1 Provisions relating to members and procedure of the Council**

(Section 9)

### **1 Term of office**

Subject to this Act, a member of the Council holds office:

(a) in the case of a parliamentary member, until a member of the House of Parliament that elected the member is elected as a replacement, and

(b) in the case of an official member, while the member holds the office by virtue of which he or she is a member, and

(c) in the case of an appointed member, for such term (not exceeding 4 years) as may be specified in the member's instrument of appointment, and

(d) in the case of an elected member referred to in section 9 (5) (a), (b), (c) or (d), for such term (not exceeding 3 years) as may be prescribed by the by-laws, and

(e) in the case of an elected member referred to in section 9 (5) (e), for such term (not exceeding 4 years) as may be prescribed by the by-laws.

### **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 the parliamentary member who is a Member of the Legislative Council, to the President of the Legislative Council, or
  - (ii) in the case of the parliamentary member who is a Member of the Legislative Assembly, to the Speaker of the Legislative Assembly, or
  - (iii) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), to the Minister, or
  - (iv) in the case of an elected member or a member appointed by the Council under section 9 (6), to the Vice-Chancellor, or
- (d) in the case of an appointed or elected member, 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 remuneration for their benefit, or
- (e) in the case of an appointed or elected member, 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) in the case of an appointed or elected member, 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
- (h) in the case of the parliamentary member elected by the Legislative Council:
  - (i) ceases to be a Member of that Council otherwise than by reason of section 22B (1) (c) of the *Constitution Act 1902*, or
  - (ii) ceases to be a Member of that Council by reason of section 22B (1) (c) of that Act and does not become a candidate at the next periodic Council election within the meaning of section 3 of that Act or, as the case may be, becomes a candidate but is not elected, or
- (i) in the case of the parliamentary member elected by the Legislative Assembly:
  - (i) ceases to be a Member of that Assembly otherwise than by reason of its dissolution or its expiration by effluxion of time, or

- (ii) ceases to be a Member of that Assembly by reason of its dissolution or its expiration by effluxion of time and does not become a candidate at the next general election of Members of that Assembly or, as the case may be, becomes a candidate but is not elected, or
- (j) in the case of an elected member, ceases to be qualified for election, or
- (k) in the case of an appointed member (other than a member appointed by the Council under section 9 (6)), is removed from office by the Minister, or
- (l) in the case of a member appointed by the Council under section 9 (6), is removed from office by the Council.

### **3 Filling of vacancy in office of member**

- (1) If the office of an appointed or elected member of the Council becomes vacant, a person is, subject to this Act and the by-laws, to be appointed or elected to fill the vacancy.
- (2) The by-laws may provide that, in such circumstances as may be prescribed, a person is to be appointed or elected (otherwise than to fill the office of a parliamentary member) in such manner as may be prescribed instead of in the manner provided for by this Act.

### **4 Committees of the Council**

- (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a committee are not members of the Council.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.

### **5 Liability of Council members and others**

No matter or thing done by:

- (a) the University, the Council or a member of the Council, or
- (b) any person acting under the direction of the University or the Council, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subjects a member of the Council or a person so acting personally to any action, liability, claim or demand.

## **6 General procedure**

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the by-laws, to be as determined by the Council.

## **7 Presiding member**

- (1) The Chancellor is to preside at all meetings of the Council at which the Chancellor is present.
- (2) At any meeting of the Council at which the Chancellor is not present, the Deputy Chancellor is to preside and, in the absence of both the Chancellor and the Deputy Chancellor, a member elected by and from the members present is to preside.
- (3) Except as provided by subclause (4), at the meetings of a committee constituted by the Council a member appointed by the Council (or, if no member is so appointed, a member elected by and from the members present) is to preside.
- (4) At any meeting of a committee constituted by the Council at which the Chancellor is present, the Chancellor is entitled, if he or she so desires, to preside at that meeting.

## **8 Quorum**

At any meeting of the Council, a majority of the total number of members for the time being of the Council constitutes a quorum.

## **9 Voting**

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

## **Schedule 2 Investment**

(Section 16)

### **1 Definition of “funds”**

For the purposes of this Schedule, the funds of the University include funds under the control of the University and real property, securities or other property comprising an investment.

### **2 Investment powers**

- (1) The Council has, in respect of the funds of the University, the investment powers conferred on the Council by Part 3 of the *Public Authorities (Financial Arrangements) Act 1987*.
- (2) If Part 3 of that Act does not confer investment powers on the Council in respect of any such funds, the Council may invest those funds:

- (a) in any manner authorised for the investment of trust funds, or
- (b) in any other manner approved by the Minister with the concurrence of the Treasurer.

### **3 Investment common funds**

- (1) The Council may establish one or more investment common funds.
- (2) The Council may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the University.
- (3) Subject to subclause (4), the Council must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.
- (4) The Council may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.
- (5) If an investment is brought into an investment common fund:
  - (a) the University is to be taken to hold that investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund, and
  - (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Council at the time it is brought into the common fund, and
  - (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Council to the equity in the common fund of that participating fund at the time of withdrawal.
- (6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.
- (7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

### **4 Terms of trust to prevail**

In respect of the trust funds of the University:

- (a) the investment powers of the Council, and

- (b) the power of the Council to bring the trust funds into an investment common fund, are subject to any express direction in or express condition of the trust.

## Schedule 3 Savings and transitional provisions

(Section 31)

### Part 1 Preliminary

#### 1 Definitions

In this Part:

**Southern Cross University** means the University established by the [Southern Cross University Act 1993](#).

**former University of New England** means the University of New England established under the [University of New England Act 1989](#).

**former University at Armidale** means the University of New England, Armidale, being the network member of that name under the [University of New England Act 1989](#).

**new University** means the University of New England established by this Act.

**transfer day** means the day on which the [University of New England Act 1989](#) is repealed.

#### 2 Regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (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.

## Part 2 Transfer of staff

### 3 Definitions

In this Part:

**officer**, in relation to the former University at Armidale, means a person who, immediately before the transfer day, held any salaried office or employment in the staff establishment of that institution otherwise than as a temporary staff member or a staff member employed on a fixed term contract.

**superannuation scheme** means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

**temporary staff member**, in relation to the former University at Armidale, means a person who, immediately before the transfer day, was employed in the staff establishment of that institution on terms and conditions that allowed for his or her services to be dispensed with at any time.

### 4 Minister may give directions as to staff

- (1) The Minister may, by order in writing, direct that a person who immediately before the transfer day held any salaried office or employment in the staff establishment of the former University of New England is taken for the purposes of this Schedule to have held that office or employment in the former University at Armidale, and any such direction has effect accordingly.
- (2) The Minister may give directions to the new University and to Southern Cross University requiring either to make specified payments to the other for the purpose of making adjustments between them in relation to their liabilities in respect of persons who become members of their staff establishments as a result of the operation of this clause. Such a direction has the effect of creating a liability to make any payment directed to be made.
- (3) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

### 5 Transfer of staff generally

- (1) Each officer of the former University at Armidale becomes, on the transfer day, an officer of the new University.
- (2) Except as provided by this Part or the regulations, the terms and conditions on which

a person becomes an officer of the new University under this clause are the same as those on which he or she was an officer of the former University at Armidale.

## **6 Remuneration and tenure**

- (1) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University becomes such an officer on the same terms and conditions as to remuneration, and duration of appointment, as those on which he or she was employed at the former University at Armidale immediately before the transfer day.
- (2) Such part of the remuneration referred to in subclause (1) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable basic wage in force under Part 2 of Chapter 2 of the *Industrial Relations Act 1991* until the salary is, or the wages are, lawfully varied.

## **7 Superannuation**

- (1) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University:
  - (a) may continue to contribute to any superannuation scheme to which the person was a contributor immediately before becoming an officer of the new University, and
  - (b) is entitled to receive any payment, pension or gratuity accrued or accruing to the person under any such scheme, as if he or she had continued to be such a contributor during his or her service as an officer of the new University.
- (2) Service by an officer of the former University at Armidale as an officer of the former University of New England is taken to be service as an officer of the former University at Armidale for the purposes of any law under which the officer continues to contribute to any such scheme or by which an entitlement under any such scheme is conferred.
- (3) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University is regarded as an officer or employee, and the new University is regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (4) If a person would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under any such scheme:
  - (a) the person is not so entitled on the person's becoming a contributor to any other superannuation scheme, and
  - (b) the provisions of subclause (3) cease to apply to or in respect of the person and



the new University where the person becomes a contributor to any such other superannuation scheme.

- (5) Subclause (4) does not prevent the payment to an officer of the former University at Armidale, on the officer's ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to the officer if the officer had ceased, by reason of resignation, to be such a contributor.

## **8 Annual leave, long service leave and sick leave**

- (1) An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University retains any rights to:
  - (a) annual leave, and
  - (b) leave in the nature of long service leave, and
  - (c) sick leave, accrued or accruing to the person as an officer of the former University at Armidale.
- (2) A person's entitlement to any such leave is to be calculated:
  - (a) for such part of any period during which that leave accrued or was accruing as occurred before the transfer day—at the rate for the time being applicable to the officer, as an officer of the former University at Armidale, before that day, and
  - (b) for such part of that period as occurred after the transfer day—at the rate for the time being applicable to the officer, as an officer of the new University, after that day.

## **9 No entitlement to dual benefits**

An officer of the former University at Armidale who, pursuant to this Part, becomes an officer of the new University is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind in respect of the same period of service.

## **10 Temporary staff**

- (1) Each temporary staff member of the former University at Armidale becomes, on the transfer day, a temporary staff member of the new University.
- (2) A temporary staff member of the former University at Armidale who, pursuant to this clause, becomes a temporary staff member of the new University becomes such a staff member on the same terms and conditions (including conditions as to remuneration) as those on which he or she was employed at the former University at Armidale immediately before the transfer day.
- (3) Such part of the remuneration referred to in subclause (2) as is salary or wages is subject to any adjustment necessary to give effect to any fluctuation in the applicable

basic wage in force under Part 2 of Chapter 2 of the *Industrial Relations Act 1991* until the salary is, or the wages are, lawfully varied.

### 11 Fixed term contracts

A fixed term contract in force, immediately before the transfer day, between a person and the former University of New England in relation to the former University at Armidale (being a contract under which the person performed services for the former University at Armidale):

- (a) is taken, for the remainder of its term, to be a contract in the same terms, between the person and the new University, under which the new University assumes the rights and obligations of the former University of New England, and
- (b) may be arbitrated, terminated or renewed in any manner provided by the contract.

### 12 Part does not apply to former CEOs etc

This Part does not apply to a person holding office as chief executive officer of a member of the University network under the *University of New England Act 1989*, or as Vice-Chancellor under that Act.

### 13 Operation of this Part generally

- (1) Nothing in this Part affects the operation of the *Industrial Relations Act 1991*.
- (2) Neither the contract of employment nor the period of employment of a person is taken to have been broken by the operation of this Part for the purposes of any law, award or agreement relating to the employment of that person.
- (3) A person is not entitled to receive any payment or other benefit merely because the member ceases to be a member of staff of the former University at Armidale by the operation of this Part.

## Part 3 Property etc

### 14 Definitions

In this Part:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**instrument** means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court.

**liabilities** means all liabilities, debts and obligations (whether present or future and

whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

### **15 What constitutes the assets etc of the former University at Armidale**

- (1) For the purposes of this Part, the assets, rights and liabilities of the former University at Armidale comprise:
  - (a) those assets, rights and liabilities of the former University of New England that relate to the former University at Armidale, and
  - (b) any assets, rights and liabilities of the former University of New England that the Minister directs by order in writing are to be regarded as assets, rights or liabilities of the former University at Armidale.
- (2) The Minister may in a direction under this clause specify a particular day that is later than the commencement of this clause as the transfer day for the purposes of any asset, right or liability to which the direction relates and the day so specified then becomes the transfer day for the purposes of the operation of this Schedule in relation to that asset, right or liability.
- (3) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

### **16 Transfer of assets etc**

- (1) On and from the transfer day:
  - (a) the assets of the former University at Armidale vest in the new University by force of this clause and without the need for any conveyance, transfer, assignment or assurance, and
  - (b) the rights and liabilities of the former University at Armidale become by force of this clause the rights and liabilities of the new University, and
  - (c) all proceedings relating to the former University at Armidale commenced before the transfer day by or against the former University of New England and pending immediately before the transfer day are taken to be proceedings pending by or against the new University, and
  - (d) anything done or omitted to be done in relation to the former University at Armidale before the transfer day by, to or in respect of the former University of New England is (to the extent that it has any force or effect) taken to have been

done or omitted to be done by, to or in respect of the new University, and

(e) a reference in any other Act, in any instrument made under any Act or in any document of any kind to the former University at Armidale or to the former University of New England (to the extent that it relates to the former University at Armidale) is to be read as, or as including, a reference to the new University.

- (2) The new University has the control and management of land that was under the control and management of the former University of New England in relation to the former University at Armidale immediately before the transfer day.
- (3) The assets of the former University at Armidale vested in the new University by this clause are vested subject to any trusts or conditions subject to which they were held immediately before the transfer day and are to be applied by the new University for the purposes of the new University.
- (4) The transfer, by this Part, of the control and management of any asset to the new University does not affect any power of the person or body by whom the control and management of that asset has been conferred, or of any lawful successor of that person or body:
  - (a) to remove the control and management of that asset from the new University, or
  - (b) to vary the conditions subject to which the control and management of that asset may be exercised by the new University,

that could have been exercised by that person or body, or by that lawful successor, in respect of that property had this Act not been enacted.

## **17 Operation of Part**

- (1) The operation of this Part is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (2) No attornment to the new University by a lessee from the former University of New England is required.
- (3) Any instrument executed only for:

- (a) a purpose ancillary to or consequential on the operation of this Part, or
- (b) the purpose of giving effect to this Part,

is not chargeable with stamp duty and is exempt from payment of any other fee or charge that would otherwise be payable under any other Act in respect of the registration of any such instrument.

## **Part 4 Interim Council**

### **18 The interim Council of the University**

- (1) Pending the commencement of section 9, the Council is to consist of such persons as the Minister appoints for the purposes of this clause (referred to in this Part as the ***interim Council***).
- (2) The members of the interim Council hold office, subject to this Act, until the commencement of section 9.
- (3) The Minister may call the first meeting of the interim Council in such manner as the Minister thinks fit.
- (4) A member of the interim Council designated by the Minister is to preside at all meetings of the interim Council until the election of the first Chancellor of the University.
- (5) The interim Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that a Council is duly constituted under section 9 so as to take office within 12 months after the commencement of this clause or within such extended time as is specified in a proclamation at any time during that period of 12 months.
- (6) The interim Council has and may exercise all the functions of the Council until the commencement of section 9, except the functions of the Council under sections 10 (Chancellor) and 11 (Deputy Chancellor). The provisions of this Act (except clause 1 (Term of office) of Schedule 1) applicable to the Council or the members of the Council apply to the interim Council and the members of the interim Council.
- (7) Schedule 1 has effect in relation to the members and procedure of the interim Council as if those members were appointed members of the Council.

### **19 Removal of current office holders**

- (1) The Board of Governors of the University of New England, as constituted immediately before the repeal of the [University of New England Act 1989](#) is dissolved.
- (2) The persons holding office as members of the Board of Governors, Chancellor, Deputy Chancellor and Vice-Chancellor immediately before the repeal of the [University of New](#)

*England Act 1989* cease to hold office as such on that repeal.

- (3) The offices of chief executive officer of a member of the University network under the *University of New England Act 1989* are abolished and the persons holding office as such immediately before the repeal of that Act cease to hold office as such on that repeal.
- (4) Nothing in this clause affects any entitlement to compensation that a person who held office as Vice-Chancellor or chief executive officer of a member of the University network immediately before the repeal of the *University of New England Act 1989* has as a result of ceasing to hold that office.
- (5) The Minister may give directions to the new University, Southern Cross University and any other university that the Minister considers should bear responsibility for compensation referred to in subclause (4), requiring the making of specified payments by them for the purpose of adjusting their liabilities in respect of that compensation. Such a direction has the effect of creating a liability to make any payment directed to be made.
- (6) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.

## **20 Election of first Chancellor**

The election of the first Chancellor of the University by the Council is not to take place until the Council is (apart from the election of Chancellor) fully constituted as provided by section 9.

## **21 Appointment of first lay member of Council**

The first appointment of a person under section 9 (6) as a member of the Council is not to take place until the other members of the Council provided for in section 9 (2), (4) and (5) have been elected or appointed.

## **22 Interim Council to appoint first Vice-Chancellor**

- (1) The first Vice-Chancellor is to be a person appointed by the interim Council on the recommendation of a committee established with the approval of the Minister for the purpose of selecting a person for appointment.
- (2) The interim Council may, instead of appointing a person to be Vice-Chancellor, appoint a person to act as Vice-Chancellor pending the appointment of a Vice-Chancellor.

- (3) If the interim Council has not appointed a person to be Vice-Chancellor before the commencement of section 9, a vacancy in the office of Vice-Chancellor is considered to have occurred (for the purpose of enabling the Council constituted under section 9 to appoint a person to be the Vice-Chancellor).

## **Part 5 Other matters consequent on the establishment of the new University**

### **23 Students**

- (1) Each person who was, immediately before the transfer day, a student of the former University at Armidale enrolled in a course of study becomes on that day a student of the new University in that course of study and the new University must provide such courses of study as are necessary for the purposes of this clause.
- (2) A course of study provided by the new University that is equivalent to a course of study provided by the former University of New England (***the former course***) is taken to be the same as the former course and accordingly a student enrolled in such a course of study is to be given credit in that course for any subject or work completed by the student in the former course.
- (3) Students enrolled in courses of study under this clause are entitled, on satisfactory completion of their courses, to appropriate awards conferred by the new University.

### **24 Arrangements for students transferred to Southern Cross University**

- (1) The new University must enter into arrangements with Southern Cross University for the purpose of affording students transferred to Southern Cross University who were enrolled in courses of study at the former University of New England immediately before the transfer day the opportunity (if they wish) to complete those courses as provided by the new University.
- (2) The ***students transferred to Southern Cross University*** are the students who become students of Southern Cross University pursuant to clause 22 of Schedule 3 to the [Southern Cross University Act 1993](#).
- (3) Students of Southern Cross University who satisfactorily complete their courses under the arrangements referred to in this clause are entitled to appropriate awards conferred by the University of New England.

### **25 Former By-laws**

- (1) The *By-laws of the University of New England* (as in force immediately before the transfer day) continue in force as if they had been made by the Council under this Act and may be amended and revoked accordingly.
- (2) A reference in those By-laws to the Board or the Board of Governors is taken to be a

reference to the Council and a reference to the Academic Senate is taken to be a reference to the Academic Board.

(3) The *Armidale College of Advanced Education By-law* is repealed.

## **26 Saving of delegations**

Any delegation made by the Board of the former University of New England in respect of the former University at Armidale and in force immediately before the transfer day continues to have effect as if it were a delegation made by the Council, but may be revoked at any time by the Council.

## **27 Existing investments**

Nothing in this Part affects the validity of any investment made by or on behalf of the former University of New England before the transfer day.

## **28 Conduct of elections etc**

- (1) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 9, elections may be conducted and appointments made before that commencement as if the whole of this Act were in force.
- (2) A member who is elected or appointed to the Council under this clause does not assume office before the commencement of section 9.

## **29 Construction of certain references**

In any other Act or in any statutory instrument (including any industrial award or industrial agreement) or other document, a reference to the former University at Armidale is, on and from the transfer day, to be read as a reference to the new University.

## **30 Determination of certain questions**

- (1) Any question arising in connection with the operation of this Schedule:
  - (a) as to which land is under the control and management of any particular institution, or
  - (b) as to which institution any assets, rights, liabilities or obligations belong or relate to, or
  - (c) as to which institution the employment of any staff pertains to,is to be determined by the Minister.
- (2) A certificate by the Minister as to a determination under this clause is, for any purpose, evidence of the matters contained in the certificate.
- (3) The Minister is not to make a determination under this clause without first consulting



with the Vice-Chancellor of each University to be affected by the proposed determination and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed determination is concerned.

### **31 Directions to University of Sydney as to liabilities of Orange Agricultural College**

- (1) The Minister may give directions to the University of Sydney (as the institution responsible for Orange Agricultural College) requiring that University to make specified payments to the new University and Southern Cross University for the purpose of adjusting the liabilities of those Universities arising under this Schedule or Schedule 3 to the *Southern Cross University Act 1993* that the Minister considers are attributable to the Orange Agricultural College.
- (2) The Minister is not to give a direction under this clause without first consulting with the Vice-Chancellor of each University to be affected by the proposed direction and unless satisfied that the Universities have been given a reasonable opportunity to resolve by agreement between themselves any dispute with which the proposed direction is concerned.
- (3) A direction under this clause has the effect of creating a liability to make any payment directed to be made.

### **32 Acts supersede *Higher Education (Amalgamation) Act 1989***

This Act and the *Southern Cross University Act 1993* supersede the operation of the *Higher Education (Amalgamation) Act 1989* in relation to the former University of New England, the former Armidale College of Advanced Education and the former Northern Rivers College of Advanced Education.

## **Part 6 Miscellaneous**

### **33 Visitor**

- (1) Section 13 (2) extends to disputes and other matters arising before the commencement of this clause.
- (2) However, if an inquiry by or at the direction of the Visitor into a dispute or other matter has commenced or been completed before the commencement of this clause, the dispute or other matter is to be dealt with and determined as if the *University Legislation (Amendment) Act 1994* had not been enacted.

### **34 Effect of the *University Legislation (Amendment) Act 1994* on existing by-laws and rules**

- (1) Any by-law made or taken to have been made under this Act and in force immediately before the commencement of this clause is taken to have been made under this Act as

amended by the *University Legislation (Amendment) Act 1994*, but only to the extent to which it could have been made under this Act if this Act had been so amended at the time the by-law was made.

- (2) Any rule in force immediately before the commencement of this clause is taken to have been made under this Act as amended by the *University Legislation (Amendment) Act 1994*, but only to the extent to which it could have been made under this Act if this Act had been so amended at the time the rule was made.