Southern Cross University Act 1993 No 69

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New South Wales

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Provisions in force

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

Notes—

- **See also**
  Statute Law (Miscellaneous Provisions) Bill (No 2) 2005

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Southern Cross University Act 1993 No 69

New South Wales

Contents

Long title 5

Part 1 Preliminary 5

1 Name of Act 5
2 Commencement 5
3 Definitions 5

Part 2 Constitution and functions of the University 6

4 Establishment of University 6
5 Incorporation of University 6
6 Object and functions of University 6
7 (Repealed) 7
8 Facilities for students, staff and others 7

Part 3 The Council, authorities and officers of the University 7

9 The Council 7
10 Constitution of Council 7
11 Chancellor 10
12 Deputy Chancellor 10
13 Vice-Chancellor 10
14 Visitor 10
15 Academic Board 11

Part 4 Functions of the Council 11

Division 1 General 11

16 Functions of Council 11

16A Controlled entities 13

17 Delegation by Council 14

17A Operation of certain Acts 14

17B Recommendations of Ombudsman or Auditor-General 14

Division 2 Property 14

18 Powers of Council relating to property 14

19 Powers of Council over certain property vested in Crown 15

20 Acquisition of land 16

21 Grant or transfer of certain land to University 16

Division 3 Commercial activities 16

21A Definitions 16

21B Guidelines for commercial activities 17

21C Register of commercial activities 18

21D Reports to Minister on commercial activities 18

21E Referral of matters to Ombudsman or Auditor-General 18

Part 4A Duties of Council members 19

21F Duties of Council members 19

21G Removal from office for breach of duty 19

Part 5 General 19

22 Provision of joint education facility at Coffs Harbour 19

23 Advance by Treasurer 19

23A Stamp duty exemption 20

24 Financial year 20

25 No religious test or political discrimination 20

26 Exemption from membership of body corporate 20

27 Re-appointment or re-election 20

28 Seal of University 20

29 By-laws 20

30 Rules 22

31 Recovery of charges, fees and other money 23
32 Savings and transitional provisions 23
33 (Repealed) 23

Schedule 1 Provisions relating to members and procedure of the Council 23

Schedule 2 Investment 26

Schedule 2A Duties of Council members 28

Schedule 3 Savings and transitional provisions 30

Southern Cross University Act 1993 No 69

New South Wales

An Act to establish the Southern Cross University 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 *Southern Cross University Act 1993*.

2 Commencement

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

3 Definitions

(1) In this Act:

commercial functions of the University means the commercial functions described in section 6 (3) (a).

Council means the Council of the University.

University means the Southern Cross University 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) 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.

(4) Notes included in this Act do not form part of this Act.

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) 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

(c) the graduates and students of the University.

5 Incorporation of University

The University is a body corporate under the name of the Southern Cross University.

6 Object and functions of University

(1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.

(2) The University has the following principal functions for the promotion of its object:

(a) the provision of facilities for education and research of university standard, having particular regard to the needs of the north coast region of the State,

(b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,

(c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,

(d) the participation in public discourse,

(e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,

(f) the provision of teaching and learning that engage with advanced knowledge and inquiry,

(g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values

and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.

(3) The University has other functions as follows:

(a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others,

(b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community,

(c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University,

(d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.

(4) The functions of the University may be exercised within or outside the State, including outside Australia.

7 (Repealed)

8 Facilities for students, staff and others

The University may, for the purposes of or in connection with the exercise of its functions, provide such facilities for its students and staff and other members of the university community as the University considers desirable.

Part 3 The Council, authorities and officers of the University

9 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.

10 Constitution of Council

(1) The Council is to consist of:

(a) 3 official members, being:

(i) the Chancellor (if the Chancellor is not otherwise a member of the Council), and

(ii) the Vice-Chancellor, and

(iii) the person for the time being holding the office of presiding member of the Academic Board (if that person is not the Vice-Chancellor) or of deputy presiding member of the Academic Board (if the presiding member is the Vice-Chancellor), and

(b) 6 external persons appointed by the Minister with, as far as practicable, at least one person appointed from each of the following categories:

(i) persons experienced in the field of education or the arts,

(ii) persons experienced in technology, industry, commerce or industrial relations,

(iii) persons who are practising, or have practised, a profession,

(iv) persons associated with the north coast region of the State, and

(c) one or more external persons (being such number as is prescribed by the by-laws) appointed by the Council, and

(d) 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

(e) 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

(f) one person:

(i) who is a 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

(g) one or more external persons (being such number as is prescribed by the by-laws):

(i) who are graduates of the University, and

(ii) who have such qualifications as are prescribed by the by-laws, and

(iii) who are (as prescribed by the by-laws) elected by graduates of the University in the manner prescribed by the by-laws or appointed by the Council.

(2) The by-laws may not prescribe a number of members for the purposes of subsection (1) (c) or (g) that when added to the number of other members to be appointed or elected to the Council would exceed 22.

(3) A person appointed under subsection (1) (g) is appointed in addition to any member appointed under subsection (1) (c).

(4) The Minister may appoint a person who is a member of the Parliament of New South Wales under subsection (1) (b) but only if the person is nominated by the Council for appointment.

No more than 2 such persons may hold office at any one time as appointed members under subsection (1) (b).

(5) 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).

(6) All appointed members of the Council 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.

(7) The majority of members of the Council must be external persons.

(8) The by-laws are to prescribe the procedures for the nomination of persons for appointment as members of the Council.

(9) Schedule 1 has effect in relation to the members and procedure of the Council.

(10) A reference in this section to external persons is a reference to persons who are not members of the academic or non-academic staff of the University or undergraduate or postgraduate students of the University.

11 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 4 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.

12 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.

13 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.

14 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).

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 Functions of Council

(1A) The Council:

(a) acts for and on behalf of the University in the exercise of the University's functions, and

(b) has the control and management of the affairs and concerns of the University, and

(c) may act in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University.

(1B) Without limiting the functions of the Council under subsection (1A), the Council is, in controlling and managing the affairs and concerns of the University:

(a) to monitor the performance of the Vice-Chancellor, and

(b) to oversee the University's performance, and

(c) to oversee the academic activities of the University, and

(d) to approve the University's mission, strategic direction, annual budget and business plan, and

(e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and

(f) to approve and monitor systems of control and accountability for the University

(including in relation to controlled entities within the meaning of section 16A), and

(g) to approve significant University commercial activities (within the meaning of section 21A), and

(h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and

(i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and

(j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and

(k) to adopt a statement of its primary responsibilities, and

(l) to make available for members of the Council a program of induction and of development relevant to their role as such a member.

(1) Without limiting the functions of the Council under subsection (1A), the Council may, for and on behalf of the University in the exercise of the University's functions:

(a) provide such courses, and confer such degrees and award such diplomas and other certificates and awards, as it thinks fit, and

(b) appoint and terminate the appointment of academic and other staff of the University, and

(c) (Repealed)

(d) borrow money 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,

(e) invest any funds belonging to or vested in the University, and

(f) promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies, or joint ventures (whether or not incorporated),

(g) (Repealed)

(h) establish and maintain branches, campuses and colleges of the University, within the University and elsewhere, and

(i) make loans and grants to students, and

(j) impose fees, charges and fines.

(2) The functions 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.

Note—

The *Annual Reports (Statutory Bodies) Act 1984* regulates the making of annual reports to Parliament by the Council and requires the Council to report on the University's operations (including in relation to risk management and insurance arrangements) and a range of financial and other matters.

16A Controlled entities

(1) The Council must ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section.

(2) The Minister may, by order in writing, permit the Council to authorise a controlled entity to exercise a function or engage in an activity of the kind referred to in subsection (1). Permission may be given in respect of a specified function or activity or functions or activities of a specified class.

(3) The Governor may make regulations providing that subsection (1) does not apply to functions or activities of a specified class.

(4) Nothing in the preceding subsections confers power on a controlled entity to engage in any activity.

(5) Nothing in the preceding subsections affects any obligations imposed on a controlled entity by or under any Act or law, other than an obligation imposed on the controlled entity by the Council at its discretion.

(5A) The Council is, as far as is reasonably practicable, to ensure:

(a) that the governing bodies of controlled entities:

(i) possess the expertise and experience necessary to provide proper stewardship and control, and

(ii) comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University, and

(iii) adopt and evaluate their own governance principles, and

(iv) document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and

(b) that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

(6) In this section:

controlled entity means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39 (1A) or 45A (1A) of the *Public Finance and Audit Act 1983*.

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.

17A Operation of certain Acts

Nothing in this Act limits or otherwise affects the operation of the *Ombudsman Act 1974*, the *Public Finance and Audit Act 1983* or the *Annual Reports (Statutory Bodies) Act 1984* to or in respect of the University or the Council.

17B Recommendations of Ombudsman or Auditor-General

The Council must include in each annual report of the Council as part of the report of its operations a report as to any action taken by the Council during the period to which the report relates to implement any recommendation made in a report of the Ombudsman or the Auditor-General concerning the Council or the University:

(a) whether or not the recommendation relates to a referral by the Minister under section 21E, and

(b) whether or not the recommendation relates to a University commercial activity (as defined in section 21A).

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.

(6) This section does not apply to land used for the conduct of a campus of the University at Coffs Harbour pursuant to arrangements referred to in section 22 (Provision of joint education facility at Coffs Harbour).

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.

Division 3 Commercial activities

21A Definitions

In this Division:

the Guidelines means the guidelines approved for the time being under section 21B.

University commercial activity means:

(a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and

(b) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines to be a University commercial activity.

21B Guidelines for commercial activities

(1) The Minister on the advice of the Treasurer may approve Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.

(2) The Council may submit proposals for the Guidelines to the Minister for approval.

(3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:

(a) requiring feasibility and due diligence assessment,

(b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),

(c) requiring the undertaking of risk assessment and risk management measures,

(d) regulating and imposing requirements concerning the delegation by the Council of any of its functions under this Act in connection with University commercial activities,

(e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 21A,

(f) establishing a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.

(4) The Council must ensure that the Guidelines are complied with.

(5) The Minister’s power to approve Guidelines is not limited by any proposals for Guidelines submitted by the Council or any failure by the Council to submit proposals for the Guidelines.

(6) Guidelines are approved by the Minister by giving notice in writing to the Council of the approved Guidelines. The power of the Minister on the advice of the Treasurer to approve Guidelines under this section includes the power to amend or rescind and replace the Guidelines from time to time.

21C Register of commercial activities

(1) The Council is to maintain a Register of University commercial activities and is to enter and keep in the Register the following details of each of those activities:

(a) a description of the activity,

(b) details of all parties who participate in the activity,

(c) details of any appointment by or on behalf of the University to relevant boards or other governing bodies,

(d) details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the Guidelines,

(e) such other details as the Guidelines may require.

(2) The Guidelines may make provision for the following:

(a) exempting specified activities or activities of a specified class from all or specified requirements of this section,

(b) altering the details to be included in the Register in respect of specified activities or activities of a specified class,

(c) enabling related activities to be treated as a single activity for the purposes of the Register.

(3) The Council must comply with any request by the Minister to provide the Minister with a copy of the Register or any extract from the Register.

21D Reports to Minister on commercial activities

(1) The Minister may request a report from the Council as to University commercial activities or as to any particular University commercial activity or aspect of a University commercial activity.

(2) The Council must provide a report to the Minister in accordance with the Minister's request.

21E Referral of matters to Ombudsman or Auditor-General

The Minister may refer a University commercial activity or any aspect of a University commercial activity (whether or not the subject of a report by the Council to the Minister):

(a) to the Auditor-General for investigation and report to the Minister, or

(b) as a complaint to the Ombudsman that may be investigated by the Ombudsman as a complaint under the *Ombudsman Act 1974*.

Part 4A Duties of Council members

21F Duties of Council members

The members of the Council have the duties set out in Schedule 2A.

21G Removal from office for breach of duty

(1) The Council may remove a member of the Council from office for breach of a duty set out in Schedule 2A.

(2) The removal from office may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.

(3) The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members for the time being of the Council.

(4) The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion at the meeting, either orally or in writing.

(5) If the member to whom the motion for removal refers does not attend the meeting, a reasonable opportunity to reply to the motion is taken to have been given if notice of the meeting has been duly given.

(6) A member of the Council may not be removed from office by the Council for breach of duty except pursuant to this section.

Part 5 General

22 Provision of joint education facility at Coffs Harbour

(1) The University may enter into arrangements with the TAFE Commission, the Minister administering the *Education Reform Act 1990* and the Director-General of School Education for the purpose of the provision of university education, technical and further education and senior secondary schooling at a university campus, TAFE college and school comprising a joint facility at Coffs Harbour.

(2) For the purposes of the arrangements, the joint facility may be established as a campus of the University, a TAFE college and a school.

23 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.

23A Stamp duty exemption

(1) Unless the Treasurer otherwise directs in a particular case, neither the University nor the Council is liable to duty under the *Duties Act 1997*, in respect of anything done by the University or Council for the purposes of the borrowing of money or the investment of funds of the University under this Act.

(2) The Treasurer may direct in writing that any other specified person is not liable to duty under the *Duties Act 1997* in respect of anything done for the purposes of the borrowing of money or the investment of funds of the University under this Act, and the direction has effect accordingly.

24 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.

25 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.

26 Exemption from membership of body corporate

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.

27 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.

28 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.

29 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 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, awards 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.

30 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), 10 (1) (c)–(g) and (8), 11 (2), 16 (1)

(d) and (e), 24 and 29 (1) (b) and (k) and clauses 1 (1) (c) and (d) 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.

31 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.

32 Savings and transitional provisions

Schedule 3 has effect.

33 (Repealed)

Schedule 1 Provisions relating to members and procedure of the Council

(Section 10)

1 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 member appointed under section 10 (1) (b) or (c), 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 referred to in section 10 (1) (d), (e) or (f), for such term (not exceeding 3 years) as may be prescribed by the by-laws,

(d) in the case of a member referred to in section 10 (1) (g), for such term (not exceeding 4 years) as may be prescribed by the by-laws (in the case of an elected member) or specified in the member's instrument of appointment (in the case of an appointed member).

(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 clause, 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).

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 a member appointed by the Minister, to the Minister, or

(ii) in the case of a member appointed by the Council, to the Chancellor, or

(iii) in the case of an elected member, to the Vice-Chancellor, or

(d) 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 estate for their benefit, or

(e) 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) is, or becomes, disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth, or

(h) is removed from office by the Council pursuant to section 21G, or

(i) 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

(j) in the case of an elected member, or a member appointed under section 10 (1) (g), ceases to be qualified for election or appointment, or

(k) in the case of a member appointed by the Minister, is removed from office by the Minister, or

(l) in the case of a member appointed by the Council, 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 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 or omitted to be done by the University, the Council or a member of the Council or any person acting under the direction of the University or the Council, if the matter or thing was done or omitted to be 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 may invest the funds of the University in any manner approved by the Minister from time to time by order in writing with the concurrence of the Treasurer.

(2) The Minister is to maintain a Register of approvals in force under this clause. The Register is to be open to inspection by any person on payment of such fee as the Minister may require.

(3) A certificate issued by the Minister certifying as to an approval in force under this clause is evidence of the matter certified.

2A Funds managers

(1) The Council may, with the written approval of the Treasurer and in accordance with that approval, engage an approved funds manager to act in relation to the management of the funds of the University.

(2) An approved funds manager is a person designated as an approved funds manager for the University in the Treasurer's approval.

(3) The Treasurer's approval may be given only on the recommendation of the Minister and may be given subject to terms and conditions.

(4) An approved funds manager may on behalf of the Council, subject to any terms and conditions of the Treasurer's approval, invest funds of the University in any investment in which the funds manager is authorised to invest its own funds or other funds.

(5) The terms and conditions of an approval under subclause (4) are to restrict the investment powers of an approved funds manager in connection with the University to the investments in which the funds of the University may be invested under clause 2.

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 2A Duties of Council members

(Section 21F)

1 Duty to act in best interests of University

A member of the Council must carry out his or her functions:

(a) in good faith in the best interests of the University as a whole, and

(b) for a proper purpose.

2 Duty to exercise care and diligence

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions.

3 Duty not to improperly use position

A member of the Council must not make improper use of his or her position:

(a) to gain, directly or indirectly, an advantage for the member or another person, or

(b) to cause detriment to the University.

4 Duty not to improperly use information

A member of the Council must not make improper use of information acquired because of his or her position:

(a) to gain, directly or indirectly, an advantage for the member or another person, or

(b) to cause detriment to the University.

5 Disclosure of material interests by Council members

(1) If:

(a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure by a member of the Council at a meeting of the Council that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of a reasonable fee determined by the Council.

(4) After a member of the Council has disclosed the nature of an interest in any matter, the member must not, unless the Council otherwise determines:

(a) be present during any deliberation of the Council with respect to the matter, or

(b) take part in any decision of the Council with respect to the matter.

(5) For the purpose of the making of a determination by the Council under subclause (4), a member of the Council who has a material interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Council for the purpose of making the determination, or

(b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) This clause does not prevent a person from taking part in the consideration or discussion of, or from voting on any question relating to, the person's removal from office by the Council pursuant to section 21G.

(8) This clause applies to a member of a committee of the Council and the committee in the same way as it applies to a member of the Council and the Council.

(9) For the purposes of this clause, a member has a material interest in a matter if a determination of the Council in the matter may result in a detriment being suffered by or a benefit accruing to the member or an associate of the member.

(10) In this clause:

associate of a member means any of the following:

(a) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of the member,

(b) the spouse, de facto partner, parent, child, brother or sister, business partner or friend of a person referred to in paragraph (a) if that relationship is known to the member,

(c) any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation.

Schedule 3 Savings and transitional provisions

(Section 32)

Part 1 Preliminary

1 Definitions

In this Schedule:

former campus means the University of New England, Northern Rivers (being the network member of that name under the *University of New England Act 1989*) and the college of the former University of New England at Coffs Harbour (known as the Coffs Harbour Centre).

former University of New England means the University of New England established under the *University of New England Act 1989*.

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 and the following Acts:

University Legislation Amendment Act 2004

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned 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 a former campus, means a person who, immediately before the transfer day, held any salaried office or employment in the staff establishment of the former campus otherwise than as a casual 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.

casual staff member, in relation to a former campus, means a person who, immediately before the transfer day, was employed in the staff establishment of that campus 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 which University staff belong

(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 a specified former campus, and any such direction has effect accordingly.

(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.

5 Transfer of staff generally

(1) Each officer of a former campus becomes, on the transfer day, an officer of the University.

(2) Except as provided by this Part or the regulations, the terms and conditions on which an officer of a former campus becomes an officer of the University are the same as those on which he or she was an officer of the former campus.

6 Remuneration and tenure

(1) An officer of a former campus who, pursuant to this Part, becomes an officer of the 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 campus 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 a former campus who, pursuant to this Part, becomes an officer of the University:

(a) may continue to contribute to any superannuation scheme to which the person was a contributor immediately before becoming an officer of the 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 University.

(2) Service by an officer of a former campus as an officer of the University is taken to be service as an officer of the former campus 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 a former campus who, pursuant to this Part, becomes an officer of the University is regarded as an officer or employee, and the 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 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 a former campus, 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 a former campus who, pursuant to this Part, becomes an officer of the 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 campus.

(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 campus, 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 University, after that day.

9 No entitlement to dual benefits

An officer of a former campus who, pursuant to this Part, becomes an officer of the 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 Casual staff

(1) Each casual staff member of a former campus becomes, on the transfer day, a casual staff member of the University.

(2) A casual staff member of a former campus who, pursuant to this clause, becomes a casual staff member of the 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 campus 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 a former campus (being a contract under which the person performed services for that campus):

(a) is taken, for the remainder of its term, to be a contract in the same terms, between the person and the University, under which the 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, as provided by clause 19 (Removal of current office holders) of Schedule 3 to the *University of New England Act 1993*.

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 a former campus 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 a former campus

(1) For the purposes of this Part, the assets, rights and liabilities of a former campus comprise:

(a) those assets, rights and liabilities of the former University of New England that relate to the former campus, 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 campus.

(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 that comprise any legal or equitable interest in real property of the college of the former University of New England at Coffs Harbour (known as the Coffs Harbour Centre) vest in the Minister by force of this clause and without the need for any conveyance, transfer, assignment or assurance, and

(b) the assets of a former campus (other than those provided for by paragraph (a)) vest in the University by force of this clause and without the need for any conveyance, transfer, assignment or assurance, and

(c) the rights and liabilities of a former campus become by force of this clause the rights and liabilities of the University, and

(d) all proceedings relating to a former campus 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 Southern Cross University, and

(e) anything done or omitted to be done in relation to a former campus 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 Southern Cross University, and

(f) a reference in any other Act, in any instrument made under any Act or in any document of any kind to a former campus is (to the extent that it relates to a former campus) to be read as, or as including, a reference to the University, or to the Minister for the purposes of paragraph (a).

(2) The 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 a former campus immediately before the transfer day, subject to any directions of the Minister in the case of land comprising an asset to which subclause (1) (a) applies.

(3) The assets of a former campus vested in the University or the Minister by this clause are vested subject to any trusts or conditions subject to which they were held immediately before the transfer day and (in the case of assets vested in the University) are to be applied by the University for the purposes of the University.

(4) The transfer, by this Part, of the control and management of any asset to the 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 University, or

(b) to vary the conditions subject to which the control and management of that asset may be exercised by the 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 Southern Cross University or the Minister 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 The interim Council

18 The interim Council of the University

(1) Pending the commencement of section 10, 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 10.

(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 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 10 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 10, except the functions of the Council under sections 11 (Chancellor) and 12 (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 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 10.

20 Appointment of first lay member of Council

The first appointment of a person under section 10 (6) as a member of the Council is not to take place until the other members of the Council provided for in section 10 (2), (4) and (5) have been elected or appointed.

21 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 10, a vacancy in the office of Vice-Chancellor is considered to have occurred (for the purpose of enabling the Council constituted under section 10 to appoint a person to be the Vice-Chancellor).

Part 5 Other matters consequent on the transfer of the former campuses

22 Students

(1) Each person who was, immediately before the transfer day, a student of a former campus enrolled in a course of study becomes on that day a student of the University.

(2) For the purpose of ensuring that those students are not disadvantaged, the University:

(a) must enter into arrangements with the University of New England for the purpose of affording those students the opportunity (if they wish) to complete the courses in which they were enrolled at a former campus to be provided by the University of New England under the *University of New England Act 1993*, and

(b) may (for such period as the University considers necessary) provide courses of study that are substantially the same as the courses of study in which those students were enrolled at a former campus.

(3) A student who is enrolled in a course of study provided by the University pursuant to this clause must, as far as it is practicable to do so, be given credit in that course for

any subject or work completed by the student in a course of study in which the student was enrolled at a former campus.

(4) Students so enrolled are entitled, on satisfactory completion of their courses, to appropriate awards conferred by Southern Cross University or the University of New England, as appropriate.

23 Former By-laws

(1) The *By-laws of the University of New England* as in force immediately before the commencement of this clause:

(a) are taken to have been made as by-laws under this Act by the Council of the Southern Cross University, and

(b) may be amended and revoked accordingly.

(2) The *Northern Rivers College of Advanced Education By-law* is repealed.

24 Saving of delegations

Any delegation made by the Board of the former University of New England in respect of a former campus 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.

25 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.

26 Conduct of elections etc

(1) For the purpose only of enabling the Council to be duly constituted on or after the commencement of section 10, 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 10.

27 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 a former campus is, on and from the transfer day, to be read as a reference to the University.

28 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.

Part 6 Miscellaneous

29 Visitor

(1) Section 14 (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.

29A Appointed members

If, on the commencement of the amendments to section 10 made by Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1999*, the membership of the Council fails to comply with section 10 (4) as so amended, then, for the purposes of clause 3 (1) of Schedule 1 to this Act, there is taken to be a vacancy in the office of the member in respect of which the failure exists.

Part 7 Provisions consequent on enactment of Universities Legislation Amendment (Financial and Other Powers) Act 2001

30 Investment powers

Until an order is made under clause 2 of Schedule 2 (as substituted by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001*), approval is taken to have been given by order under that clause to the investment by the Council of any funds of the University in any manner that the Council was authorised to invest those funds

immediately before the Council ceased to be an authority for the purposes of Part 3 (Investment) of the *Public Authorities (Financial Arrangements) Act 1987*.

31 Validation

Any act or omission occurring before the substitution of section 6 by the *Universities Legislation Amendment (Financial and Other Powers) Act 2001* that would have been valid had that section as so substituted been in force from the commencement of that section as originally enacted is (to the extent of any invalidity) taken to be, and always to have been, valid.

Part 8 Provisions consequent on enactment of University Legislation Amendment Act 2004

32 Definitions

In this Part:

amending Act means the *University Legislation Amendment Act 2004*.

former section 10 means section 10 as in force immediately before its substitution by the amending Act.

new section 10 means section 10 as substituted by the amending Act.

relevant day means the date of assent to the amending Act.

33 General

The provisions of this Part are subject to any regulations made under clause 2.

34 Constitution of Council

(1) Subject to this Act, on the relevant day:

(a) a person holding office under former section 10 (2) ceases to hold that office, and

(b) a person holding office under former section 10 (4) (a) or (b) or (6) is taken to be appointed as a member under new section 10 (1) (g), (b) or (c), respectively, for the balance of the person's term of office, and

(c) a person holding office under former section 10 (5) (a), (b) or (c) is taken to be elected as a member under new section 10 (1) (d), (e) or (f), respectively, for the balance of the person's term of office.

(2) The Council is to make all necessary by-laws and take all necessary steps to ensure, as far as possible, that the Council is duly constituted under new section 10 as soon as is reasonably practicable after the relevant day.

(3) For the purposes of making the by-laws referred to in subclause (2), the Council must be constituted so as to include all of the members required to be appointed under new section 10 (1) (b).

(4) The Council is taken to be properly constituted until such time as it is constituted in accordance with new section 10.

(5) A casual vacancy occurring in the office of a member before the Council is duly constituted under new section 10 is to be filled as follows:

(a) if the vacancy occurs in the office of a member appointed under new section 10 (1) (b), the Minister is to appoint a person whom the Minister considers appropriate,

(b) if the vacancy occurs in the office of a member appointed under new section 10 (1) (c), the Council is to appoint a person whom the Council considers appropriate,

(c) if the vacancy occurs in the office of a member elected under new section 10 (1) (d) or (e), the Council is to appoint a person qualified to hold that office,

(d) if the vacancy occurs in the office of a member elected under new section 10 (1) (f), the Council is to appoint a person qualified to hold that office following consultation with the relevant student body or bodies recognised by the Council,

(e) if the vacancy occurs in the office of a member appointed under new section 10 (1) (g), the Council is to appoint a person qualified to hold that office following consultation with the alumni association or body for the University.

(6) Subject to this Act, a member appointed under subclause (5) holds office from the time that person is appointed under that subclause until the expiry of the term of that member’s predecessor.

(7) Subject to this Act, if, on the expiry:

(a) of a member’s term of office that is continued under subclause (1) (b) or (c), or

(b) in the case of a member appointed under subclause (5), of the term of office of the member’s predecessor,

the by-laws necessary to enable a person to be duly appointed or elected (as the case may be) to that office under new section 10 are not yet in force, the member may continue to hold that office until such time as a person is so duly appointed or elected.

(8) For the purposes of subclause (1), a member filling a casual vacancy and holding office immediately before the relevant day is taken to hold that office immediately before the relevant day under the provision under which the member’s predecessor was elected or appointed.

(9) A person who ceases to hold office under subclause (1) (a):

(a) is not entitled to any remuneration or compensation because of loss of that office, and

(b) is eligible (subject to this Act and if otherwise qualified) to be appointed as a member.

35 Maximum incumbency for Council members

(1) Consecutive years of office served by a member of the Council immediately before the relevant day are to be taken into account in applying clause 1 (3) of Schedule 1 in respect of the member.

(2) However, clause 1 (3) of Schedule 1 does not affect the operation of clause 34 (1) (b) or (c) or (7) of this Schedule.

36 Application of section 21G

Section 21G, as inserted by the amending Act, applies only in relation to breaches of duty constituted by acts or omissions occurring after the relevant day.

37 Effect of amendments on existing by-laws and rules

(1) Any by-law in force immediately before the relevant day is taken to have been validly made under this Act (as amended by the amending Act) but only to the extent to which it could validly have been made immediately after that day.

(2) Any rule in force immediately before the relevant day that could validly have been made immediately before that day is taken to have been validly made under this Act as amended by the amending Act.

(3) On and after 1 September 2005, subclause (2) does not validate any rule in force immediately before the relevant day that could not have been validly made after the relevant day.

38 Continuation of Council

No amendment made by the amending Act affects the continuity of the Council.